

FOR INFORMATIONAL USE ONLY - DO NOT USE FOR BIDDING

CONTRACT T62000-25E - PIN 0761.70

BID SCHEDULE

Bids will be compared as stated in the proposal for bids, and as provided by law. The bidder is referred to Division 2., Section 1., of the specifications for an interpretation of work performed and bid, and Division 2., Section 2., for a description of the various items delineated below. The cost of performing other kinds of work and furnishing other kinds of material required and necessary to fulfill all the provisions of this contract in their present form for which no item is provided in the schedule below, SHALL BE DEEMED TO HAVE BEEN INCLUDED AND DISTRIBUTED IN THE ITEMS OF THIS SCHEDULE.

OPERATIONS ITEMS:

ITEM NO.	APPROX. QUANTITIES	DESCRIPTION	FACTOR (Months)		
1A/1B	1	Computer Hardware & Ancillary Equipment	x 36	x _____	_____
<hr/>					
2A/2B	900	Field Communication Units S	x 36	x _____	_____
<hr/>					
3	125	IM Camera Equipment	x 36	x _____	_____
<hr/>					
4	6	Travel Time Equipment	x 36	x _____	_____
<hr/>					
5	1	Fiber Splice Trailer	x 36	x _____	_____
<hr/>					
6	LS	As Ordered (furnish equipment)			= \$ <u>129,600.00</u>
<hr/>					
7	6	Trailer Mount VMS Signs	x 36	x _____	_____
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BID SCHEDULE

8	5	Generator Light Towers	x 36	x _____	_____
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TIME AND MATERIAL ITEMS:

Time:

\$135,000.00 x _____
(Overhead & Profit % + 100%)

Material:

\$ 60,000.00 x _____
(Overhead & Profit % + 100%)

Subtotal of Time and Material _____

TOTAL BID:

Subtotal of Operations Items _____

Subtotal of Time and Material _____

NOTE: The figure in both the Time and Material percentage are not indicative of an estimate price. This figure is merely inserted as a basis for bidding purposes.

**NASSAU COUNTY
DEPARTMENT OF PUBLIC WORKS
TRAFFIC MANAGEMENT CENTER**

SIGNAL SYSTEM OPERATIONS PHASE V

DIVISION 1 - GENERAL

1. PURPOSE

The purpose of this specification is to establish the minimum requirements for the operation of the County's traffic signal control computer and the ancillary equipment located at the Traffic Management Center in the Public Safety Center Building, Westbury, New York 11590, together with all field communications units, copper and fiber optic modems located throughout Nassau County, and the certification and conditioning of the interconnect cables.

2. CONTRACTOR EXPERIENCE

The proper operation of the Traffic Management Center traffic signal control system is of a critical public safety nature. Prospective bidders must have at least three years of satisfactory maintenance experience and demonstrate management ability in the actual operation and maintenance of a considerable number of types of complex Traffic Control Equipment and Intelligent Transportation Systems.

The prospective bidders or their sub-contractor must have:

- a) at least three years extensive experience with time division multiplex systems and modems operating at a BAUD rate of 1550 bits per second with a minimum of 15 telemetry units on a single communications channel.
- b) a thorough understanding of the Concurrent M48-080 ULI (Universal Logic Interface), together with actual interface experience at a minimum of three locations.
- c) an extensive knowledge of private and public owned traffic control cable plants.
- d) extensive knowledge and a minimum of three years experience with traffic control equipment, cabinet wiring, and the interfacing of traffic control equipment with telemetry devices.

- e) primary experience maintaining a central traffic signal computer system with a minimum of 1,200 traffic signals and one hundred (100) communications zones.
- f) extensive knowledge and experience with fiber optic cable, modems, connectors, and the maintenance of these items.
- g) extensive knowledge of Ethernet communications as well as layer three internet protocol communications, internet protocol (IP) addressing, spanning tree protocols, Ethernet over copper (first mile) protocols, VLANs, and network security protocols.
- h) contractor must have staff available at all times who are Cisco "Certified".
- i) contractor shall be familiar with the following software and operating systems: Windows Server, Microsoft SQL, Microsoft Office Suite, PC Anywhere, Cisco Software, Ipswitch What's-Up Gold, Siemens Tactics, and Actelis MetaAssist.

The primary Contractor will be permitted to issue subcontracts only for Division II, Section 2, Items 1A/1B of this document, which is the operations / maintenance of the traffic control computer equipment located at the Traffic Management Center, and the repair of equipment. All subcontractors are subject to the approval of the County. All other items of work in this contract must be fulfilled by personnel of the primary Contractor.

It is noted that there are time requirements in this contract for the completion of emergency and maintenance work. It is vitally important that sufficient spare parts are in stock or readily available within 24 hours in order that the Contractor can comply with these time requirements and adequately ensure public safety.

3. AREA OF COVERAGE

The area of coverage for this contract shall include, but not be limited to, all items in this contract under the jurisdiction of the Nassau County Traffic Management.

The County of Nassau reserves the right during the terms of this contract to increase, decrease, or eliminate an item of coverage, and the Contractor is hereby advised that they will receive no additional compensation other than the unit prices as expressed in the contract for such addition or deletion (see Appendix IV).

4. WORK INCLUDED

The work includes the furnishing of all transportation, labor, materials, signs, equipment, parts, tools, and appurtenances required to perform the work in accordance with this specification.

5. DEFINITIONS

The following definitions are in addition to the definitions as described in Article 1 of the Agreement.

a) Commissioner

The Commissioner of Public Works, County of Nassau or a representative of the Office of the Commissioner of Public Works, County of Nassau.

b) Communications Line

Any copper or fiber optic line used to transmit and receive data for a given control zone, including all spares and voice lines associated with the control zone.

c) Computer and Ancillary Equipment

Electronic devices used to supervise the split, offset, and cycle length of traffic signal controllers in systems. The computer and ancillary equipment are located at the Traffic Management Center, Department of Public Works, Traffic Management, 1194 Prospect Avenue, Westbury, New York 11590.

d) Controller

The mechanism used to time and control the indications of traffic signals; including the cabinet, terminals, wiring, switches, cabinet relays, auxiliary equipment, and all other parts, except time clocks, detectors, amplifiers, and special timing units.

e) Department

Department of Public Works, Nassau County.

f) Deputy Commissioner

Deputy Commissioner of the Department of Public Works.

g) Destination Time Signs

Equipment used to determine travel times along roadways, and then displays the average time to a particular destination. When Destination Time Signs are mentioned in this document, it refers to all related equipment including tag readers.

h) Direct Labor Cost

(As applied to Division 2, Section III, Time and Material) shall be the current New York State prevailing base labor rate schedule for an electronic technician in the Nassau County area as verified by the New York State Department of Labor plus

seventy percent (70%) supplement. This 70% supplement shall cover all fixed, variable, and other direct labor costs of the Contractor. The above 70% supplement shall not change for the duration of this contract. Any changes to the base labor rate during the duration of this contract, shall be verified by the New York State Department of Labor before payment can be made. Supplement percentages for the Subcontractor's personnel will be computed and verified by the Department.

i) Division

Division of Engineering, Department of Public Works, Nassau County

j) Electrically-Operated Traffic Control Devices

All traffic control signals, pedestrian control signals, floodlights, and all other illuminated devices whose maintenance is the responsibility of the Department of Public Works.

k) Fiber Optic Enclosures

Any unit specifically designed and utilized for housing fiber optic splices, whether located at Central or in the field. Fiber optic distribution cabinets and fiber optic splice cases are included in this category.

l) Fiber Optic Modem

A device used as an interface between an electrical signal and a light signal. These units are located at Central and in cabinets in the field.

m) Fiber Optic Splice

A device used to connect one fiber to another permanently. This connection couples light from one component to another with as little loss of optical power as possible, by the precise alignment of the mated fiber core so that nearly all the light is coupled from one fiber across the junction into the other fiber.

n) Field Communication Unit

An electronic device used to receive and transmit messages between the computer and ancillary equipment, and the local traffic signal controller. This unit may be located within the confines of the traffic signal controller cabinet. This unit may be digital (Ethernet) or analog (telemetry).

o) Hourly Rates

(As applied to Division 2, Section III, Time and Material) shall indicate the current direct labor cost for those personnel that modify, construct, remove or install traffic control devices.

p) Incident Management Equipment

Closed circuit television camera system that are used to monitor vehicular movement along roadways within the County. The incident management system is made up of field cameras, digital encoders, decoders, hardware and control equipment.

q) Maintain, Maintaining, Maintenance

These terms shall include in addition to other work specified, the following:

- (i) the monthly inspection of all equipment under the "Routine Maintenance and Inspection Program."
- (ii) the repair or replacement of any defective or worn-out control device, electrical, electronic, mechanical, or electro/mechanical component or part.

r) Material

(As applied to Division 2, Section III, Time and Material) are those physical components and equipment that are furnished and/or installed. The cost of these materials shall be the net cost to the Contractor, including all discounts. Proof of material and equipment costs shall be submitted to the Engineer for approval prior to payment.

s) Miscellaneous Devices

Devices not included in other categories.

t) Overhead

(As applied to Division 2, Section III, Time and Material) shall include the following expenses of the Contractor and Subcontractor, and shall be deemed to include all other costs other than direct labor cost, material, and profit percentages:

- (i) all transportation costs, including vehicles, rental charges, fuel, repair, and incidentals, except Subcontractors' transportation costs and rental charges
- (ii) all other equipment except Subcontractors' equipment
- (iii) office personnel
- (iv) supervision; including transportation
- (v) insurance

(vi) office expenses; including light, heat, power, rent, and office equipment

(vii) communications equipment, including phones, internet and TV.

(viii) travel time; direct labor cost to and from job site

u) Overtime

Overtime paid by the Contractor on emergency time and material work, as ordered by the Division, will be computed for the total labor cost actually paid by the Contractor, and shall be listed separately from other time costs. All overtime shall be verified by the Division.

v) Project Manager

County employee assigned to oversee the operation and administration of this contract.

w) Routine Maintenance

Work items that shall be performed regularly to insure that equipment will continue to operate efficiently and safely.

x) Sensor Station

The location of devices used to measure the volume, speed, and time occupancy of traffic in a particular lane or lanes. When located away from a signalized intersection, the cabinet will contain the appropriate number of amplifiers for the sensors. The cabinet may also contain terminations of the interconnect cable and field communications units.

y) Subcontractor

Any individual, firm, or corporation to whom the Contractor, with the written consent of the Department, sublets any part of the contract.

z) Traffic Signal System Contractor

The individual firm or corporation undertaking the execution of the work under the terms of this contract and acting directly or through his, their, or its agents, and employees. This traffic signal system Contractor must be aware that they will be working closely and in cooperation with any Traffic Signal Maintenance Contractor to insure the proper functioning of the signals controlled by the central system.

aa) Traffic Management Center (TMC)

Located in the Public Safety Center, 1194 Prospect Avenue, Westbury, NY 11590. The traffic control computers and all ancillary equipment including a display wall are located there. All commands, instructions, and reports generated to operate the system are originated from the Traffic Management Center.

bb) Traffic Management Warehouse

Located at Cedar Creek Park, 3350 Merrick Road, Wantagh, New York. This facility houses the Traffic Management field equipment and equipment inventory.

cc) Traffic Signal Shop

Located at 1194 Prospect Ave, Westbury New York, 11590. This center is responsible for the installation and maintenance of all County-owned traffic signals and miscellaneous devices operating within Nassau County not covered under this contract.

dd) Traffic Signal Maintenance Contractor

The electrical contractor duly authorized by the County of Nassau to maintain all County-owned traffic signal installations, and miscellaneous devices operating within Nassau County, in accordance with the current valid contract.

ee) Unscheduled Repairs

Emergency repairs, which occur as the result of damage shall include all work required to restore the system or other equipment under the jurisdiction of Traffic Management to its original normal operating condition. All necessary work under this definition will be paid under Section III, Time and Material.

6. APPARENT OMISSIONS

The apparent silence of these specifications as to any detail or the apparent omission from them of a detailed plan concerning any work to be done and materials to be furnished, shall be regarded as meaning that only the best workmanship and material shall be used. Work not specified, but involved in the proper execution of the work, is required and shall be performed by the Contractor as though it were specifically delineated or described. Interpretation of these specifications shall be made upon that basis. All schedules, directives, and conditions are subject to change by the direction of the Commissioner.

7. NUMBER OF UNITS

The number of units shown in the bid schedule is an estimate of the number expected to be in service on the effective date of the contract. The actual number of units in the service at that

time may vary from the estimate.

8. COMMUNICATIONS SERVICE

The Contractor's communication center shall receive and record all calls for service or repair originating from the public and forward all calls for service or repair to the Traffic Management Center for action.

9. CHARGING THE CONTRACTOR FOR WORK PERFORMED BY OTHERS

When the Contractor fails to perform on time in response to calls, this work will be subject to being accomplished by other than the successful bidder of this contract, as so ordered by the Commissioner. All direct and indirect costs and expenses related thereto will be paid by the Contractor, in accordance with the Agreement.

10. EQUIPMENT

During the course of the contract, equipment shall be furnished to Traffic Management for use by Nassau County personnel in the administration of this contract. A list of said equipment will be provided with model numbers/specifications that will be provided to Traffic Management staff within twenty (20) days of the request. The County may impose a payment % penalty for items received after the required twenty (20) day delivery period.

It is expressly understood and agreed that the foregoing bid is the basis for establishing the amount of the bid security on this proposal and includes the following allowance:

\$120,000 for the purchase of computer hardware, computer equipment, software, tools, communication equipment, office equipment, field equipment, apparel and any other incidentals or purchases that may be required as authorized by the project manager. Payments to the Contractor will be strictly on the basis of manufacturer's or supplier's invoices including shipping. Sales tax will not be reimbursed. Claims for payment of material furnished, including material furnished by a Subcontractor shall clearly show material cost plus eight percent (8%) delivered to Traffic Management. If the cost of the equipment exceeds the \$120,000 allowance, the Contractor will be paid the increased amount based on invoices. The equipment shall be delivered within twenty (20) calendar days after the request is made.

11. REQUIRED EQUIPMENT

- a) The Contractor shall provide for each of the full-time field maintenance/operations employees assigned to this contract the following equipment for the duration of the contract:
 - One (1) 5G Cellular telephone (smartphone).
 - One (1) Battery powered video test monitor with 12v charger and carry case.
 - One (1) Operations Tablet with mobile charger, built in 5G Verizon cellular

network access (including data plan). Tablet computer shall be equal or greater than iPad (A16) including ruggedized case and apple pencil. Each unit shall be provided with a mobile docking station to be mounted in the respective vehicles. Tablets shall be free of corporate security restrictions.

- One (1) Operations Laptop with charger and carry case. Laptop shall be equal or greater than Dell 15 Laptop, HP Laptop 15 or approved equivalent and must include Windows OS and MS Office, 15" Screen, 8GB Ram, 512 SSD, USB and RJ45 network ports. Laptops shall be free of corporate security restrictions.
- Two (2) battery operated ½ inch impact guns shall be shared by the employees for use in day-to-day operations.

b) The Contractor shall provide the following equipment for use by Nassau County Traffic Management Staff for the duration of the contract:

- Six (6) Cellular 5G telephones (smartphones)
- One (1) 5G Mobile Hotspot including Verizon data plan.
- Two (2) Internet Modems from two (2) separate internet service providers each with ten (10) Static IP addresses and each having a minimum of 500 MBPS download / 500 MBPS upload speeds. A combined total of 1.5 GB down/up is required between the two service providers.
- Five (5) HDTV Receivers – from two (2) separate television service providers with mid-level service plans. Two (2) must be DVR units.
- Two (2) Satellite HDTV Receivers with mid-level service plans.
- Two (2) TMC Operations Desktop Computers that shall be equal to or greater than Dell Optiplex 3000 SFF, HP ProMini 400 G9, or approved equivalent. Each with (2) two 24 Inch flat screen monitors, Wireless mouse & keyboard, Windows OS, MS Office and solid-state hard drive.
- One (1) Operations Laptop with charger, carry case, 13-inch monitor, Windows OS, Microsoft Office and blue tooth mouse. Laptop computer shall be equal or greater than Dell XPS 13, HP EliteBook Ultra G1Q or approved equivalent. Minimum 16GB Memory, i9 processor and solid-state drive.
- One (1) Vinyl Cutter / Printer shall be equal or greater than Roland VersaStudio BN-20A. Shall include two (2) sets of ink cartridges (4 colors), three (3) rolls of 20"x50' gloss white adhesive backed printable vinyl and software suite.

12. PARTS - CONTRACTOR

For the purpose of repair and maintenance, the Contractor shall furnish all parts as required for use in the operation of the electronic control devices, including complete units or parts, necessary to comply with the terms of this contract. The County of Nassau will not be responsible for furnishing any parts under this contract, except as stated under 20 - SPARE EQUIPMENT - NASSAU COUNTY".

All replacement parts or components shall be new and equal to the original part or component replaced. If the Contractor replaces a defective component or part with

anything but the same manufacturer's make, model, quality, etc., he shall first receive permission in writing from the Project Manager. Prior to the start of the project, the contractor shall deliver the inventory equipment listed in Division 2, Appendix V. Contract will not commence until all required inventory equipment is in place. Upon completion of the contract, the equipment in sections 10, 11 and 12 will become property of Nassau County.

13. CONTRACTOR'S COMMUNICATIONS AND OPERATIONS CENTER

The Contractor shall maintain an Operations Center within the County of Nassau. The center shall include office facilities, complete shop facilities, and storage area to perform the required work under this specification.

Upon issuance of the Commence Work Order, the Contractor's Operations Center shall be fully equipped with complete shop facilities, including test equipment for the repair of various types of electronic control equipment.

14. SHOP FACILITY

The Contractor shall have on hand a complete stock of electronic control equipment within the Nassau County limits. This equipment shall be sufficient to insure strict compliance with the requirements of this specification. The shop facility shall include, in addition to other equipment, the following minimum equipment:

- a) A device that emulates the central communication commands with a self-contained modem, and provides detector simulation, phase return inputs, and a solid-state controller interface. This device attaches to a telemetry unit and exercises the communications, inputs, and outputs.
- b) Oscilloscope
- c) Analog Voltmeter or equivalent.
- d) VOM with audible continuity.
- e) One portable Oscilloscope with Dual Channel.
- f) Logic State Analyzer
- g) Fiber optic splicing equipment (stripper, cleaver, splicer, connectors, etc.).
- h) Optical Time Deflection Reflectometer (OTDR) for testing fiber optic cable.
- i) Fiber Optic laser test light – to easily identify breaks in fiber cable.
- j) Network test set that will test and identify all 8 pairs of Cat 5 or Cat 6 cable

The above equipment shall be functionally operational and tested. The shop facilities

shall be available at all times during the business day for inspection by the Department.

15. CONTRACTOR'S PERSONNEL

The Contractor shall maintain a sufficient staff of trained maintenance, modification, field, and bench emergency repair personnel. The maintenance personnel assigned by the Contractor shall be Journeymen Maintenance Electricians, each with a minimum of five years experience in each of the following: in-field troubleshooting, repairs of electrical/electronic traffic signal equipment, telemetry maintenance and operation, Ethernet communications maintenance and operation, and communications cable diagnostics.

At the start of this contract all primary field maintenance personnel assigned to this contract, shall be certified by the International Municipal Signal Association, Inc. as "Traffic Signal Technician - Level II". In addition, at the start of this contract, two of the primary maintenance personnel shall be certified as "Traffic Signal Technician - Level III". The certification exams shall be obtained through the I.M.S.A. The Contractor is responsible for any and all fees necessary for the required applications and examinations. The I.M.S.A. shall administer the certification exams. The Contractor shall furnish photocopies of all Certification Documents to the Engineer. Primary maintenance personnel must also have a valid and current Cisco CCT certification for the duration of the contract.

The Contractor shall assign three (3) people permanently (primary maintenance personnel) to this contract with qualifications as described above that will work Monday to Friday excluding Federal holidays. The Contractor shall assign at least one (1) additional person, with the same qualifications, to this contract, when any of the following system conditions exist:

- a) any five or more noncontiguous communications zones are down (failed).
- b) any forty (40) or more intersections in noncontiguous zones are down (failed).
- c) if any two (2) permanent personnel are absent. (sick / vacation)

No additional payment shall be made for the additional person(s) discussed above.

Failure to furnish personnel in a timely manner shall result in a penalty of 1/10th of Items 1A/1B and 2A/2B monthly bid price for each day delay in meeting this requirement.

Work hours: Staff assigned to this contact shall work split shifts in order to cover a twelve (12) hour work day (7 AM to 7 PM). The morning shift shall consist of 7 AM to 3:30 PM including a 1/2 hour meal break and the afternoon shift shall consist of 10:30 AM to 7 PM including 1/2 hour meal break.

In accordance with union contract policy, Federal Holidays that fall on a weekend will be observed either on the Friday before or the Monday after the holiday.

Personnel shall have sufficiently equipped vehicles assigned to them for exclusive use on this contract. Two vehicles shall be equipped with an interior equipment storage shelving system and an aerial bucket with sufficient height to service communications cable, aerial termination boxes (ATB) and traffic surveillance cameras located throughout the system. The third vehicle, a full size 4 wheel drive SUV or 4 wheel drive extended cab pickup style vehicle shall be equipped with interior equipment storage or a weather tight exterior storage system, four-wheel drive and a class III towing hitch. All three vehicles will be equipped with a minimum of 2,000 watt 12 volt DC to 110 volt AC power inverter, a mobile docking station with GPS/LTE rooftop antenna for the tablet computer and all vehicles shall have less than 30,000 miles at the commencement of the contract. County provided two-way radios will be installed in each vehicle for communications between vehicles and with the Traffic Management Center. The County reserves the right to reject any vehicle if they feel it is not in compliance with the criteria listed above. At least one bucket truck shall be on the job daily. Upon request an alternate vehicle with a class III towing hitch or a bucket truck with an extended reach must be available for use when required at no additional charge.

All expenses related to contractor's personnel including equipment, vehicles, tools and accessories are paid for under Division 2, Section 1A/1B and 2A/2B of this contract.

Severe Storm / Disaster Response: In the wake of a severe storm, or other disaster, the Contractor shall provide up to an additional four (4) personnel each with vehicles capable of towing field equipment and have up to an additional two (2) people on stand-by if requested by the Project Manager. Arrangements for personnel should be made and personnel should be identified prior to the storm's arrival with the Project Manager, and the Contractor should prepare and stage equipment as necessary. Storm / Disaster personnel will be assigned to and report directly to the County Project Manager until such time that they are released and no longer needed. Personnel furnished shall be paid for under Section III, Time and Material.

16. DAILY WORK REPORT

The Contractor shall be required to keep a neat, accurate, and up-to-date record of the types and locations of all equipment within the scope of this contract. These records shall be in a format approved by the Project Manager, and shall include, but not be limited to the following:

- a) location and number of intersections controlled by electrically operated field communication devices.
- b) type and amount of field communication equipment at each intersection, and method of operation.
- c) time, date, and details of repairs, replacement, cleaning, etc. by intersection.
- d) timing, offset, and program information by intersection and section.
- e) complete maintenance history of all equipment in this contract by serial number and

intersection.

Electronic daily work reports, provided by the County Project Manager, must be completed and delivered to Traffic Management weekly for record keeping and verification of work completed. All records shall become the property of the County of Nassau.

17. WORK ORDERS

All calls for service shall be recorded the daily work report. These work orders shall be in a format approved by the Project Manager, and shall include, but not be limited to the following:

- a) location
- b) device number
- c) Nassau's work order number
- d) date and time Contractor was notified of work
- e) person making notification or authorizing work
- f) date and time Contractor arrived at scene
- g) date and time repair was completed
- h) type of malfunction and/or damage found
- i) repair of malfunction and/or damage and how it was serviced, etc.
- j) service technician's name

Nassau shall issue consecutive numbered work orders. Delinquent work orders shall not be permitted. After ten days, delinquent work orders shall be deemed just cause to delay any claim for payment until the delinquent work order is complete and forwarded to County. Assignments for service will be transmitted from Traffic Management to field operations staff via two-way radio and via the computer tablets in each vehicle. Calls will be assigned based on geographical location of the maintenance staff to ensure efficient response to outages.

18. INTERSECTION RECORD CARD

The Traffic Signal Maintenance Contractor (separate contract) maintains the 5" x 8" intersection record card. This record shall remain at the intersection controller cabinet. Under the terms of this contract, the record card shall be kept up to date by indicating the date any device was installed, the date removed for maintenance (scheduled or unscheduled), the work performed at the intersection, and the date reinstalled. A separate record card will also be used for Camera, VMS, Travel Time and Communications HUB cabinets.

19. REPORTS

All work performed in accordance with the terms of this specification shall be tabulated and reported in conjunction with the monthly claim in a form agreeable to the Commissioner.

20. SPARE EQUIPMENT - NASSAU COUNTY

Nassau County will furnish the following spare traffic equipment:

- a) 10 field communications telemetry units
- b) 2 handheld program units
- c) 6 Actelis Ethernet field communications units
- d) 4 Cisco 8 port Ethernet field switches
- e) 2 Cisco 24 port Ethernet field switches
- f) Optical SFP modules

The Contractor shall maintain the above spare equipment. Upon completion of this contract, the above County-owned equipment shall be returned to the County within fourteen (14) calendar days. This equipment shall be checked out and be certified in working order to the County. Failure to return this equipment in a timely manner and in satisfactory working order shall result in delay of payment of the final claim.

The Contractor shall remove, transport, and return the field communications units to the field locations at no addition cost to Nassau County.

21. WIRING DIAGRAMS

All wiring diagrams pertaining to County-owned equipment, originating either with the equipment manufacturer or the Contractor, are the property of the County and shall be forwarded to the Project Manager at the conclusion of this contract.

22. CLEANLINESS

Upon completion of the work at each location, the Contractor shall remove all remaining material and shall leave the area, which may have been affected by this operation in a neat and orderly condition.

23. COOPERATION

A certain amount of County-owned equipment covered by this specification is installed on poles owned by utility companies. The Contractor shall respect the rights of, and cooperate as fully as possible with these utility companies, other contractors, and all County departments.

24. STANDARDS

New York State Department of Transportation Traffic Signal Standard Specifications including Region 10 special specifications are made a part of this contract.

25. RECOURSE

This contract does not imply that the approved Contractor, following the award of this contract, has the exclusive right or legal recourse to the County for any other similar

computer control type contract, or any other traffic signal contract, which includes the computer installation and maintenance work that may be awarded during the life of this contract.

26. VANDALISM

The Contractor at no additional expense to the County shall repair all damage caused by vandalism to equipment maintained under this contract. Payment for vandalism, including graffiti, shall be distributed over the items of this contract and included in the bid.

27. SAFETY

The Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the work. The Contractor shall take all reasonable precautions for the safety of, and shall provide all reasonable protection to prevent damage, injury, or loss to:

- a) all employees on the work site and all other persons who may be affected thereby.
- b) all the work and all materials and equipment to be incorporated therein, whether in storage on or off the job site, under the care, custody, or control of the Contractor, or any of his Subcontractors or Sub-subcontractors.
- c) other property at the job site or adjacent thereto, including roadways, structures, and utilities not designated for removal, relocation, or replacement in the course of construction.

The Contractor shall comply with all applicable laws, ordinances, rules, regulations, and orders of any public authority having jurisdiction for the safety of persons or property or to protect them from damage, injury, or loss. The Contractor shall erect and maintain, as required by existing conditions and progress of the work, and or as ordered by the Engineer, all reasonable safeguards for safety and protection, including posting warning signs and other warnings against hazards, in accordance with the New York State Manual of Uniform Traffic Control Devices, promulgating safety regulations and notifying owners and users of adjacent utilities.

When the use or storage of hazardous material or equipment is necessary for the execution of the work, the Contractor shall exercise the utmost care and shall carry on such activities under the supervision of properly qualified personnel.

All damage or loss to any property caused in whole or in part by the Contractor, any subcontractor, any sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable, shall be remedied by the Contractor.

The Contractor shall designate a responsible member of his organization, under the contract, whose duty shall be the prevention of accidents. This person shall be the Contractor's Project

Manager, unless otherwise designated in writing by the Contractor to the County.

28. OPERATIONAL UNITS

On the last County working day of the calendar month, one hundred (100%) percent of the field communications units, whether or not they are connected to the central computer, must be operational. If not, this will be justification for delaying payment of the monthly claims until this requirement is met. An operational unit is defined as a field communications unit that is ready and capable of performing all required functions.

29. AERIAL CABLE

The Contractor shall make an annual inspection of all aerial cable, both copper and fiber. The first inspection shall occur within six (6) months of the commence work date. All reports of such inspections shall be forwarded to the Traffic Management Center with the next monthly claim. Inspection shall include the checking of all connections at all aerial termination boxes (ATB), checking the integrity of all "in-line" splices, checking the jacket for crazing, splitting, checking, or any other damage. Any tree branches found to be interfering with or affecting the cable shall be removed. The removal of any tree branches shall be considered routine maintenance and shall be completely at the expense of the Contractor.

30. POLE TRANSFERS

All pole transfers whether scheduled or unscheduled will be completed as soon as practical after notification by the Project Manager. No additional payments shall be made for pole transfers as they will be completed utilizing the personnel assigned to this contract during normal business hours.

31. EQUIPMENT TOWING

As requested by the project manager, contractor vehicles may be requested and utilized to tow field equipment such as portable traffic equipment and cargo trailers.

32. STORM RESPONSE

During the planning stages for an impending storm, the contractor's personnel assigned to this contract will be placed on standby, to maintain a state of readiness in order facilitate a quick response to incidents immediately following the storm. If needed, additional personnel with 4 x 4 vehicles may also be requested to be placed on standby.

32. TRAFFIC SIGNAL BACKUP POWER

At any given time, the contractor must maintain one electrician available to respond with the Traffic Management Emergency Response team. This team will respond to traffic signal power outages and connect back-up generators to restore traffic signal operation.

33. FUNDING

The total value of this contract shall be equal to the amount appropriated in the approved budget, together with those amounts which shall be appropriated in the approved budgets for the succeeding years, together with any additional appropriation which may be made during the term of this contract for the purpose of this contract.

34. LENGTH OF CONTRACT

The contract term shall be for thirty-six (36) months, except as provided for under the paragraph entitled Special Provisions and Conditions, Division 2 page 12.

**NASSAU COUNTY
DEPARTMENT OF PUBLIC WORKS
TRAFFIC MANAGEMENT CENTER**

COMPUTER AND FIELD COMMUNICATIONS

DIVISION 2 - DETAIL OF ITEMS

SECTION I

Operations and maintenance of all items shall be paid for on the basis of a unit cost per month, multiplied by the number of months of the contract duration to determine the cost of these items.

SECTION II - ITEMS INCLUDED

ITEM 1A - Computer Equipment

The work is comprised of the operations, repair and maintenance of the Legacy traffic control computer and ancillary equipment under the Concurrent product line as well as the New Traffic Management servers under the Dell product line, the Hewlett-Packard video wall servers and ancillary equipment, and various servers and communications equipment related to the Incident Management and Travel Time Signs systems. The contractor will also be responsible to repair/maintain various Computer equipment including printers and scanners.

Contractor shall provide a service/support/maintenance contract with the following vendors:

The Activu Corporation for the video wall and associated Activu equipment and servers listed in appendix 1. The Activu contract must include but is not limited to two (2) annual maintenance site visits and technical support.

Teleste Video for the traffic surveillance video management system, associated Teleste computer equipment and servers listed in appendix 1.

Yunex Traffic for the Tactics traffic signal control software and its associated hardware listed in appendix 1.

Coval Systems for the Foundation ATMS control system and its associated hardware listed in appendix 1. Service contract should include engineering support, reporting, upgrades, bug fixes and technical assistance.

The above referenced equipment is located in the Traffic Management Center, 1194 Prospect Avenue, Westbury, New York 11590 (see Appendix I).

Contractor shall provide a information service contract with Schneider Electric for their

MxVision Weather Sentry software which includes access for two (2) desktops and one (1) mobile app. And a two (2) user "Breaking News Network" contract for access to their Desktop News Client and Mobile Device Application.

Any call for maintenance under this Item shall be responded to between the hours of 7 a.m. and 5 p.m., Monday through Friday, excluding holidays. The call will be serviced within two (2) hours on the same day the call is placed. If the call is placed after 5 p.m., it shall be responded to by 7 a.m. the next workday.

ITEM 1B - Ancillary Equipment

Included in Item 1B is the operations, repair and maintenance of all other equipment ancillary to the computer system, including, but not limited to Concurrent, APC, Dell, Cisco, and Hewlett Packard product line located in the Traffic Management Center, DPW Building, 1194 Prospect Avenue, Westbury, New York 11590 (see Appendix II), as well as, in field locations (see Appendix III). This equipment shall be maintained under the same requirements established under Item 1A - Computer Equipment. If the equipment under this item is changed, added to, or modified during the course of the contract, the bid price for this item will be adjusted to reflect the change.

All equipment in Items 1A and 1B shall be subjected to a preventive maintenance regimen in order to ensure maximum systems availability. Preventive maintenance shall cover each element of this system with a specific, detailed checklist designed to identify marginal system components so that corrective actions can be taken prior to a failure.

Particular emphasis should be placed upon the repair and return to service of both the central and field modems. The Contractor shall maintain a minimum of six (6) operational 1550 BAUD modems, six (6) operational Actelis Ethernet switches, and six (6) operational Cisco 8 port Ethernet switches as spares. In addition, the contractor shall maintain an inventory of multiple types of 100Base and 1000Base SFP modules.

Payment for these items shall be inclusive of Item 1A and 1B described. The basis for payment shall be unit cost per month.

ITEM 2A - Field Communications

The work is comprised of the operations, repair, maintenance and operations of field communications units including all internal components and attaching cables to the point of attachment on the terminal strip within the cabinet. Communications units and attaching cables are subject to routine inspection every sixty (60) days and reported on the daily work order form. All "standby" data found in the telemetry units shall be checked and adjusted to meet current timing schedules. Maintenance under this item shall also include the checking of all system sensors to verify communication with the associated signal cabinet. Any sensor loop or amplifier that is found to be malfunctioning shall be reported to the Traffic Management Center for forwarding through Signal Operations at 1194 Prospect Avenue, Westbury to the current Traffic Signal Maintenance Contractor

(separate contractor).

- Field telemetry units are usually located at signalized intersections in either pole-mounted or ground-mounted cabinets. These cabinets contain, in addition to the field telemetry units, other equipment used in the timing and controlling of traffic signals. The Contractor shall only be responsible for maintenance and operation of the field telemetry units and its associated cables.
- Ethernet communications units are usually located at signalized intersections, camera cabinets, and communications HUB cabinets either pole-mounted or ground-mounted. These cabinets contain, in addition to the field telemetry units, other equipment used in the timing and controlling of traffic signals. In traffic signal cabinets, the Contractor shall only be responsible for maintenance and operation of the Ethernet communications units and its associated cables.
- Field Data Collection units are usually located at signalized intersections, or other traffic cabinets and are either pole or ground mounted. These units consist of blue tooth reader equipment, wi-fi reader equipment, cameras, radar equipment or wireless vehicle sensor equipment. Older versions of this equipment include pole mounted count stations with vehicle loop sensors.

The Contractor shall be available between the hours of 7:00 a.m. and 7:00 p.m., Monday through Friday, excluding all Federal holidays (Division 1, Section 15). These hours of operation may be changed during the life of the contract at the direction of the County. At the beginning of the contract, the contractor shall submit a list of paid holidays to the County project manager for approval.

The Contractor shall respond only to work orders and directives issued from the Traffic Management Center. Response to work orders shall be as follows:

- a) all work orders transmitted to the Contractor between the hours of 7 a.m. and 5 p.m. on a normal business day shall require the Contractor to respond to the intersection or intersections within two (2) hours.
- b) all work orders transmitted to the Contractor at times other than those specified in Paragraph (a) above, shall require the Contractor to respond to the intersection or intersections on a priority established by the Traffic Control Center as follows: Work orders received prior to 7 a.m. shall require the Contractor to respond by 9 a.m. the same day; Work orders received after 5 p.m. shall require the Contractor to respond commencing no later than 7:00 a.m. the next business day following the transmittal.

All field communications units that have failed or are removed from the field for repairs shall be repaired or replaced within five (5) business days.

When a field communications unit is removed from the field location for repairs, the

Contractor shall replace the defective unit with a working spare from the contractor's stock or furnished by the County.

All units repaired and returned to service shall operate a minimum of twenty-four (24) hours to fulfill the requirement of a completed repair. If a repaired and returned to service unit fails within twenty-four (24) hours it shall be considered as non-operational and not repaired for the purposes of billing.

Thunderstorms, lightning damage, etc. shall not be justification for failure to fulfill the obligations as specified in the contract.

Maintenance under this item shall also include the synchronization of all communications units not connected to the Traffic Management Center, 2070 controllers (see Appendix V) that have replaced pre-existing controllers, and telemetry units within system control zones in order to maintain system progressions, as well as any other device that the Engineer deems necessary. All communications units operating in standby mode, and all 2070 controllers with no communications shall be checked and resynchronized on a weekly schedule or as ordered by the Project Manager.

In addition, during the course of this contract, it is anticipated that existing field equipment (controller, field communications unit, etc.) that are located at some signalized locations will be replaced under separate contracts with 2070 controllers in order to provide future interconnection with the proposed Central Traffic Computer. The proposed Central Traffic Computer will eventually replace the existing Micro-3 (Legacy) Central Traffic Computer.

Existing timing schedules for the traffic signal controllers at all Nassau County signalized intersections covered under this contract will remain in force and shall be maintained with the 2070 controller, unless modified timings are ordered by the Project Manager.

This item shall maintain all Intelligent Transportation Systems installed in the signal cabinets, auxiliary cabinets or communications HUB cabinets. This equipment includes but is not limited to; system sensor detection loops and amplifiers, wireless sensors, video detectors, blue tooth reader equipment, wi-fi reader equipment, road weather information systems equipment and battery back-up devices.

Maintenance under this item shall include the furnishing and replacement of non-functioning varistors, lightning protection, and line conditioning equipment in place prior to this contract or installed during its life. The Contractor shall be responsible for maintaining lightning protection on all copper communications lines both at Central and field locations covered in this contract.

The fiber optic splice cases associated with the computerized signal system shall be maintained under this item. The work is comprised of the maintenance of the fiber optic splice case (including case resealing), splice trays, copper terminations, associated attaching cables, and related hardware.

The operational inventory for the purposes of billing shall be determined as the number of intersections equipped with operational communications units, whether or not they are connected to the Central Computer, for the entire billing month.

Any intersections without an operational communications unit at any time during a given month shall have its monthly maintenance bid price (Item 2A) deducted from the operational inventory for that month.

Payment for this item shall be all inclusive of Item 2A described. The basis for payment shall be a unit cost per month for each telemetry unit in operation.

ITEM 2B - Field Ethernet Switches

The work is comprised of the operations, repair and maintenance of Ethernet Switches (both local signal and hub locations) including all internal components and associated cables to the patch panel within the cabinet. Ethernet Switches and associated cables are subject to routine inspection every sixty (60) days and reported on the daily work order form. Maintenance under this item shall also include the checking of all system sensors to verify communication with the associated 2070 Controller. Any sensor loop or amplifier that is found to be malfunctioning shall be reported to the Traffic Management Center for forwarding to the Signal Shop for repair.

The Ethernet Switches are usually located at signalized intersections in either pole-mounted or base-mounted cabinets. These cabinets contain, in addition to the Ethernet Switch, other equipment used in the timing and controlling of traffic signals. The Contractor shall only be responsible for the Ethernet Switches, Transceivers, Media Converters, SFP modules, and their associated copper or fiber cables and is not permitted to make any adjustments or repairs to the other equipment in the cabinet.

The Contractor shall be available between the hours of 7:00 a.m. and 7:00 p.m., Monday through Friday, excluding Federal holidays (Division 1, Section 15). These hours of operation may be changed during the life of the contract at the direction of the County.

The Contractor shall respond only to work orders and directives issued from the Traffic Management Center. Response to work orders shall be as follows:

- a) all work orders transmitted to the Contractor between the hours of 7 a.m. and 5 p.m. on a normal business day shall require the Contractor to respond to the intersection or intersections within two (2) hours.
- b) all work orders transmitted to the Contractor at times other than those specified in Paragraph (a) above, shall require the Contractor to respond to the intersection or intersections on a priority established by the Traffic Management Center as follows: Work orders received prior to 7 a.m. shall require the Contractor to respond by 9 a.m. the same day; Work orders received after 5 p.m. shall require the Contractor to respond no later than 7:00 a.m. the next business day following the transmittal.

All Ethernet Switches that have failed or are removed from the field for repairs shall be repaired or replaced within five (5) calendar days.

When an Ethernet Switch is removed from the field location for repairs, the Contractor shall replace the defective unit with a working spare from the stock furnished by the County.

All units repaired and returned to service shall operate a minimum of twenty-four (24) hours to fulfill the requirement of a completed repair. If a repaired and returned to service unit fails within twenty-four (24) hours it shall be considered as non-operational and not repaired for the purposes of billing. An operational unit is one that satisfies all requirements of the respective Specification for the particular Ethernet Switch, Transceiver, or SFP module.

Thunderstorms, lightning damage, etc. shall not be justification for failure to fulfill the obligations as specified in the contract.

Maintenance under this item shall also include the synchronization of all traffic signals not connected to the Traffic Management Center Server (Closed Loop Systems). All units operating remotely with no communication back to the Traffic Management Center shall be checked and resynchronized on a weekly schedule or as ordered by the project manager.

Existing timing schedules for the traffic signal controllers at all Nassau County signalized intersections covered under this contract will remain in force and shall be maintained with the 2070 controller, unless modified timings are ordered by the Engineer.

This item shall maintain all Intelligent Transportation Systems installed in the signal cabinets, auxiliary cabinets or communications HUB cabinets. This equipment includes but is not limited to; system sensor detection loops and amplifiers, blue tooth reader equipment, wi-fi reader equipment, road weather information systems equipment and battery back-up devices.

Maintenance under this item shall include the furnishing and replacement of non-functioning varistors, lightning protection, and line conditioning equipment in place prior to this contract or installed during its life. The Contractor shall be responsible for maintaining lightning protection on all copper communications lines both at Central and field locations covered in this contract.

The fiber optic splice cases associated with the computerized signal system shall be maintained under this item. The work is comprised of the maintenance of the fiber optic splice case (including case resealing), splice trays, copper terminations, associated attaching cables, and related hardware.

The operational inventory for the purposes of billing shall be determined as the number of intersections equipped with operational Ethernet Switches, whether or not they are connected to the Traffic Management Center, for the entire billing month.

Any intersections without an operational Ethernet Switch at any time during a given month shall have its monthly maintenance bid price (Item 2) deducted from the operational inventory for that month.

Payment for this item shall be all inclusive of Item 2A described. The basis for payment shall be a unit cost per month for each Ethernet Switch in operation under the jurisdiction of this Division.

Work that consists of correcting data transmission problems, which may arise on the existing, copper or fiber cable plant during the course of the contract is included as part of section 2A/2B. When elevated signal to noise ratios or other interferences to data transmissions occur, the Contractor shall remove or reduce this interference, by replacing existing devices that have deteriorated or by installing devices such as inductors, capacitors, line amplifiers, etc. or by cleaning and applying a protective coat to cable terminations located in controller, termination, or splice cabinets. The work also consists of correcting optical transmission problems which may arise on the existing fiber optic cable plant during the course of the contract. When elevated line loss conditions occur, the Contractor shall develop an Optical Time Domain Reflectometer (OTDR) trace to identify the problem area. The Contractor shall reduce the line loss by re-splicing existing splice locations, and/or adding, removing, or changing fiber optic signal attenuators, as necessary or as ordered by the Engineer. Payment for this work is included as part of section 2A/2B. Any fiber optic signal attenuators removed shall be returned to Traffic Management.

ITEM 3 – Incident Management Camera Equipment

The work is comprised of the operations, repair and maintenance of the County's Incident Management System including cameras, camera control, camera cabinets, encoders, decoders and associated communications equipment. Approximately 130 Cameras and all associated equipment are subject to routine inspection every ninety (90) days and reported on the daily work order form.

The Incident Management Cameras are usually located at signalized intersections in either cantilever mounted (dome camera) or at the top of a strain pole (top mount) configuration. The camera cabinets contain, in addition to the Ethernet Switch, other equipment used in the conjunction with the operation of the traffic camera.

The Contractor shall be available between the hours of 7:00 a.m. and 7:00 p.m., Monday through Friday, excluding Federal holidays (Division 1, Section 15). These hours of operation may be changed during the life of the contract at the direction of the County.

The Contractor shall respond only to work orders or directives issued from the Traffic Management Center. Response to work orders shall be as follows:

- a) all work orders transmitted to the Contractor between the hours of 7 a.m. and 5 p.m. on a normal business day shall require the Contractor to respond to the intersection or intersections within two (2) hours.
- b) all work orders transmitted to the Contractor at times other than those specified in

Paragraph (a) above, shall require the Contractor to respond to the intersection or intersections on a priority established by the Traffic Management Center as follows: Work orders received prior to 7 a.m. shall require the Contractor to respond by 9 a.m. the same day; Work orders received after 5 p.m. shall require the Contractor to respond commencing no later than 7:00 a.m. the next business day following the transmittal.

- c) All camera lenses shall be cleaned two (2) times annually. In addition, any small tree branches that may obstruct camera views shall be removed at the time of the cleaning / inspection.

All cameras that have failed or are removed from the field for repairs shall be repaired or replaced within five (5) business days.

All units repaired and returned to service shall operate a minimum of twenty-four (24) hours to fulfill the requirement of a completed repair. If a repaired and returned to service unit fails within twenty-four (24) hours it shall be considered as non-operational and not repaired for the purposes of billing. An operational unit is one that satisfies all requirements of the respective Specification for the particular piece of camera equipment.

ITEM 4 – Travel Time Signs

The work is comprised of the operations, repair and maintenance of the County's Travel Time Sign System including signs, control equipment, cabinets, tag readers, and associated communications equipment. Approximately 12 Travel Time Signs and all associated equipment are subject to routine inspection every ninety (90) days and reported on the daily work order form.

The Travel Time Signs are usually located road-side along the County's major arterials. The Travel Time Sign cabinets contain, in addition to the Ethernet Switch, other equipment used in the conjunction with the operation of the sign system.

The Contractor shall be available between the hours of 7:00 a.m. and 7:00 p.m., Monday through Friday, excluding Federal holidays (Division 1, Section 15). These hours of operation may be changed during the life of the contract at the direction of the County.

The Contractor shall respond only to work orders and directives issued from the Traffic Management Center. Response to work orders shall be as follows:

- a) all work orders transmitted to the Contractor between the hours of 7 a.m. and 5 p.m. on a normal business day shall require the Contractor to respond to the intersection or intersections within two (2) hours.
- b) all work orders transmitted to the Contractor at times other than those specified in Paragraph (a) above, shall require the Contractor to respond to the intersection or intersections on a priority established by the Traffic Management Center as follows:

Work orders received prior to 7 a.m. shall require the Contractor to respond by 9 a.m. the same day; Work orders received after 5 p.m. shall require the Contractor to respond commencing no later than 7:00 a.m. the next business day following the transmittal.

All signs that have failed or are removed from the field for repairs shall be repaired or replaced within five (5) business days.

All units repaired and returned to service shall operate a minimum of twenty-four (24) hours to fulfill the requirement of a completed repair. If a repaired and returned to service unit fails within twenty-four (24) hours it shall be considered as non-operational and not repaired for the purposes of billing. An operational unit is one that satisfies all requirements of the respective Specification for the particular piece of camera equipment.

ITEM 5 – Fiber Splice Trailer

Contractor shall provide one (1) Deluxe Fiber Optic Splice trailer for use in conjunction with the Operations of Traffic Management. In the event of planned or un-planned incidents, this fiber trailer will be deployed in order facilitate maintenance or emergency repair of overhead or underground fiber optic cables. Upon completion of the project, ownership of the trailer will be transferred to Nassau County. The trailer shall meet or exceed the following specifications:

- 7x12 Aluminum Trailer with 8” Aluminum frame
- Dual 3,500# axles with electric brakes
- 16” on center aluminum tube walls, floor and ceiling
- Tongue jack and rear scissor jacks
- Screwless aluminum exterior (white)
- 28-inch entry doors with windows and aluminum steps
- Two (2) 16x16 cable access doors with brush seal
- Roadside and curbside windows
- Black coin flooring
- Full length upper cabinets and counter (roadside)
- Flip up island counter
- Rolling chair
- 4.5 KW gas generator in ATP compartment with 30-gallon fuel tank
- 50 Amp twist lock input receptacle (exterior) with Gen/Shore transfer switch
- 15,000 BTU Air conditioning and 1500W Heater
- 36” LED Directional light bar front and rear
- LED strobe and scene lights
- LED DOT lighting
- 7-way blade connector
- 2 5/16” adjustable coupler
- AM/FM/Bluetooth stereo system with 4 speakers
- Spare tire (delivered loose)

ITEM 6 – As Ordered (furnish equipment – force bid)

During the course of this contract \$129,600 (incl. multiplier) has been allocated for the purchase of supplies and equipment which will be selected by the County during the course of the contract period. Details regarding this item can be found in Division 1, Section 10.

ITEM 7 – Trailer Mounted VMS Signs

Contractor shall provide six (6) trailer mounted Variable Message Signs for use in conjunction with the Operations of Traffic Management. In the event of planned or unplanned events, these VMS signs will be deployed in order to inform the motoring public of details related to construction, road closures and alternate routes available. Six (6) signs (mid-size) shall be 48 inches high X 96 inches high shall be provided. Upon completion of the project, ownership of the 6 signs will be transferred to Nassau County. All six (6) signs shall meet or exceed the following specifications:

- Single Color Display
- LED Full matrix display with message scrolling and scheduling capability
- Solar powered with 110 Volt charging system
- Lithium-Ion Battery array should operate sign for 20 days without charging
- IP cellular network connectivity (including Verizon cellular service fees)
- Remote control access software (must be compatible with AMSIG software)
- PTZ IP CCTV Camera with adjustable height mast
- Hydraulic Sign Hoist
- Metal battery boxes.
- Handheld operator's terminal
- Sign trailer and cabinets shall be white in color
- Each trailer shall be delivered with a spare tire
- 2 5/16" trailer hitch with the ability to tow trailers in tandem
- All trailer lights must be LED with 7-way blade connectors

ITEM 8 – Generator Light Towers

Contractor shall provide five (5) towable generator light towers for use in conjunction with the Operations of Traffic Management. In the event of planned or un-planned events, these light towers will be deployed in order to illuminate a scene to increase personnel operating, pedestrians or the motoring public. Four (4) 6.0 kW light towers shall be 47.5" wide X 100" long shall be provided. One (1) 13.5 kW light tower shall be 76" wide X 136" long shall be provided. Upon completion of the project, ownership of the 5 light towers will be transferred to Nassau County. All five (5) light towers shall meet or exceed the following specifications:

- Four 320W LED Lights
- 23 Foot telescopic light mast
- 60.0 Hz Output frequency

- Water cooled diesel motor
- Kohler motor with Mecc Alte Generator
- Programmable controllers
- Shall be white or light grey in color
- 6 kW unit – (1) 20A 120V outlets / (1) 30A Twist Lock
- 13.5 kW unit – (2) 20A 120V outlets / (1) 30A Twist Lock / (1) 50A Twist Lock
- 2 5/16” trailer hitch coupler
- All DOT lights must be LED with 7-way blade connectors

SECTION III - TIME AND MATERIAL

The Contractor as ordered by the Engineer under this Section shall perform installations, modifications, and major repairs. The County reserves the right to furnish any or all materials under Section III, Time and Material.

The County reserves the right to request a written estimate for all installations and modifications. All estimates shall be returned to the Engineer no later than two (2) weeks from the date of the request.

Upon issuance of a work order, the Contractor shall complete the actual field construction within four (4) weeks. Catalog cuts must be provided to the project manager for review and approval prior to purchase or installation of any materials.

The Contractor shall be subject to all the provisions of the Articles in the Agreement of this contract for any incomplete work and shall be noted accordingly.

PAYMENT - TIME AND MATERIAL

Payment for work performed as directed under this Section shall be on a Time and Material basis. Claims for payment of material furnished, including material furnished by a Subcontractor shall clearly show material cost and percentage for overhead and profit. Material cost times (the sum of the overhead and profit percentage + 100%) shall be equal to the total cost of material for this item.

Claims for the payment of time, including the Subcontractor's time shall clearly show the personnel hours and the hourly rates for direct labor cost and percentage for overhead and profit. Hourly rates of direct labor cost times (the sum of the overhead and profit percentage + 100%) shall equal the total cost of time. Claims for the payment of equipment used by the Subcontractors shall show the actual number of hours worked for each piece of equipment used on the job.

The hourly equipment rates shall be the daily rates divided by eight (8) as listed in the "Rental Rate Blue Book for Construction Equipment" (Blue Book), published by the Equipment Guide Book Company, or approved equal.

The Contractor shall require that payment for any work performed by a Subcontractor be

verified with an itemized breakdown of material used and its cost, personnel hours, hourly rates of direct labor costs, and equipment type and number of hours used. Additionally, the Contractor shall be allowed five (5%) percent of the Subcontractor's paid cost of materials, direct labor costs, and equipment costs to cover the Contractor's additional overhead and supervision costs. In computing the five (5%) percent, it shall be based solely on the Subcontractor's cost of labor, materials, and equipment, exclusive of overhead and profit. The Subcontractor's percentage for overhead and profit shall be not more than the Contractor's percentage for overhead and profit less five (5%) percent.

SECTION IV - MATERIALS AND INSTALLATION

All materials furnished by the Contractor shall be new and of excellent quality acceptable to the Engineer. The project manager may require the submission of samples for approval. All such materials used in modifications and major repairs shall be the same as that which is replaced, or better. The Contractor shall specify, in writing, to the project manager, the manufacturer's name, model, quantity, etc. of the materials he intends to use.

All materials and installation methods shall meet the applicable "Traffic Signal Standard Specifications and Drawings." These specifications and standards may be changed from time to time during the life of this contract, and the latest revision shall govern. Materials used on Federal Aid projects should conform with NYSDOT Materials Inspection Manual (See also MURK Part 2-A) as well as the "Materials Approved List"

SPECIAL PROVISIONS AND CONDITIONS

Extension of Contract:

The Department reserves the right to extend this contract for a period of not more than twelve (12) calendar months beyond the normal termination date, at one to three month intervals, at the same bid price per item. Notice of extension will be given in writing not less than fifteen (15) days in advance of the existing contract termination date.

APPENDICIES

APPENDIX I

ITEM 1A - COMPUTER EQUIPMENT

<u>Item</u>	<u>Qty</u>	<u>Manufacturer</u>	<u>Description</u>
1)	36	Dell	Dell Power Edge Server
2)	20	Dell	Optiplex desktop computer & monitors
3)	1	Symmetricon	Network time clock
4)	1	Cisco	6500 Series switch
5)	40	Cisco	24 port network switch
6)	10	Cisco	48 port network switch
7)	5	Cisco	VPN Firewall
8)	225	Cisco	8 port network switch
9)	300	Actelis	Ethernet over copper modem
10)	10	HP	Proliant Server
11)	2	APC	8000 VA Smart-UPS
12)	5	APC	3000 VA Smart-UPS
13)	10	APC	1200 VA Back-UPS
14)	5	Latitude	Dell Laptop
15)	2	HP	Color Inkjet Printer
16)	3	HP	Color Laser Printer
17)	10	67 Inch	Mitsubishi Video Cubes
18)	20	Samsung	HD Display Monitors
19)	2	Buffalo	Terrastation Network Storage
20)	3	Teleste	8 Port Analog Video Decoders
21)	3	Teleste	1 Port HD Video Decoders
22)	3	Samsung	DVD / Blu-ray player
23)	400	Comnet	Fiber/Copper Media Converters
24)	3	Dell	Precision Servers
25)	5	FortiNet	VPN Firewall
26)	20	Geist	Environmental Monitors
27)	5	Enviromux	Environmental Monitors
27)	35	Encom	Wireless Broadband Radios

During the course of this contract, the number of equipment listed above may increase or decrease as part of system expansion, upgrade or replacement.

APPENDIX II

ITEM 1B - ANCILLARY EQUIPMENT

- 1) Communication racks complete include but may not be limited to: power supplies, fiber optic patch panels, rack-mounted media converters, keyboard, video, mouse pull out trays, shelving units, wire management, cooling fans and power wires.
- 2) Singlemode fiber optic duplex patch cables in various lengths with LC and ST connectors.
- 3) Ethernet patch cables in various lengths.
- 4) Fiber optic SFP modules for various transmit distances for 100 Mbps and gigabit.
- 5) Miscellaneous computer power cables and connectors
- 6) Miscellaneous VGA and HDMI cables and connectors
- 7) VGA and HDMI Extenders via cat 6 cable
- 8) KVM Extenders with sound via cat 6 cable
- 9) USB Extenders via cat 6 cable

APPENDIX III

COMMUNICATION HUB CABINET LOCATIONS

	<u>#</u>	<u>Location</u>
1)	3	North Jerusalem @ Merrick Ave, North Merrick
2)	4	Grand Ave @ School St, Baldwin
3)	4A	Grand Ave @ High School Dr, Baldwin
4)	4B	Grand Ave @ Merrick Rd, Baldwin
5)	5	Franklin Ave @ First Ave, Franklin Square
6)	6	Peninsula Blvd @ President St, Hempstead
7)	7	Peninsula Blvd @ Vincent, Lynbrook
8)	8	Peninsula Blvd @ Rockaway Tpke, Hewlett (Zones 48, 49, 82)
9)	11	Front St @ Franklin St, Hempstead
10)	13	Lakeville Rd @ Union Tpke, New Hyde Park
11)	14	Old Country Rd @ County Seat Dr, Mineola (Zone 12)
12)	14A	Old Courthouse Communications Room, Mineola
13)	15	Old Country Rd @ Zeckendorf Blvd, Carle Place
14)	16	Old Country Rd @ Urban Ave, Westbury
15)	17	Old Country Rd @ Newbridge Rd, Hicksville
16)	18	Old Country Rd @ Orchard St, Plainview
17)	19	Old Country Rd @ Manetto Hill Rd, Plainview
18)	20	Greenwich St @ Henry St, Hempstead
19)	21	Merrick Rd @ Bergen / Elks Plaza, Freeport
20)	22	Atlantic Ave @ S. Bayview Ave, Freeport
21)	23	Merrick Rd @ Earle Ave, Lynbrook
22)	25	Peninsula Blvd @ Branch St, Hewlett
23)	26	Franklin Ave @ 11 th St, Garden City
24)	27	Franklin Ave @ 5 th St, Garden City
25)	28	Franklin Ave @ 2 nd St, Hempstead (Zones 58, 76)
26)	28A	Franklin Ave @ Front St, Hempstead (Zone 66)
27)	30	Jerusalem Ave @ Clare, Uniondale
28)	31	Long Beach Rd @ Foxhurst Rd, Oceanside
29)	32	Long Beach Rd @ Mott St, Oceanside

- 30) 33 Long Beach Rd @ Park St, Long Beach (Zones 34, 61, 62, 63, 64, 77)
- 31) 35 Merrick Rd @ Clubhouse Rd, Merrick
- 32) 36 Merrick Rd @ Park Pl, Bellmore
- 33) 37 Merrick Rd @ Willoughby Ave, Seaford
- 34) 38 Merrick Rd @ Massapequa Ave, Massapequa
- 35) 41 South Oyster Bay Rd @ Woodbury Rd, Plainview
- 36) 43 Dutch Broadway @ Fletcher Ave, Elmont
- 37) 44 Merrick Rd @ Grove St, Valley Stream
- 38) 45 Merrick Rd @ Shaw Ave, Valley Stream
- 39) 46 Central Ave @ Wells St, Valley Stream
- 40) 47 Mill Rd @ Jedwood Pl, Valley Stream
- 41) 51 Corporate Dr @ Merchants Concourse, Westbury
- 42) 52 Post Ave @ Drexel Ave, Westbury
- 43) 53 West John St @ Charlotte St, Hicksville
- 44) 54 Jerusalem Ave @ Winding Rd, Hicksville
- 45) 56 Peninsula Blvd @ Nassau Expressway, Inwood
- 46) 58 Clinton Rd @ Stewart Ave, Garden City
- 47) 59 Stewart Ave @ Nassau Blvd, Garden City
- 48) 60 Oceanside Rd @ Brower Ave, Oceanside
- 49) 65 Glen Cove Rd @ Northern State Pky, Westbury
- 50) 68 Long Beach Rd @ Foxhurst Rd, Oceanside (Zone 78)
- 51) 69 Brush Hollow Rd @ Wantagh Pky, Westbury
- 52) 70 Central Ave @ Stewart Ave, Bethpage
- 53) 71 Wantagh Ave @ Laurel La, Wantagh
- 54) 72 Wantagh Ave @ Sprucewood Dr, Levittown
- 55) 73 North Jerusalem Ave @ Oakfield Rd, North Bellmore
- 56) 76 Stewart Ave @ Clinton Rd, Garden City
- 57) 79 Peninsula Blvd @ Rockaway Tpke, Cedarhurst
- 58) 80 Middle Neck Rd @ Schenck Ave, Great Neck Plaza
- 59) 81 Middle Neck Rd @ Nirvana Ave, Great Neck
- 60) 83 Roslyn Rd @ Northern State Pky, Roslyn Heights
- 61) 84 Main St @ Old Northern Blvd, Roslyn
- 62) 85 Old Country Rd @ South Oyster Bay Rd, Hicksville (Zone 41, 42)
- 63) 86 Merrick Rd @ Forest Ave, Rockville Centre

- 64) 87 Merrick Rd @ Grand Ave, Baldwin
- 65) 88 Merrick Rd @ Unqua Rd, Massapequa
- 66) 89 Atlantic Ave @ S. Main St, Freeport
- 67) 90 Glen Cove Rd @ Town Path, East Hills
- 68) 91 Merrick Rd @ Park Blvd, Massapequa
- 69) 92 Nassau Blvd @ Stratford Ave, Garden City
- 70) 93 Nassau Rd @ Lakewood Ave, Roosevelt
- 71) 94 N Main St @ Seaman Ave, Freeport
- 72) 95 N Long Beach Rd @ Demott Ave, Rockville Centre
- 73) 96 Brush Hollow Rd @ Prospect Ave, Westbury

APPENDIX IV
FIELD COMMUNICATIONS EQUIPMENT

<u>Street or Area</u>	<u>No. of Units</u>
Middle Neck Road, Great Neck	21
Lakeville Road / Marcus Avenue	16
Old Country Road, Mineola to Plainview	68
Mineola Blvd, Franklin Ave/St, Mineola to Hempstead	29
Village of Garden City (except Franklin Avenue)	19
Village of Hempstead (except Franklin Street)	27
Greenwich St / Henry St	16
Jerusalem Ave, Hempstead to Uniondale	14
Merrick Avenue, Merrick	17
Grand Avenue, Baldwin	19
Franklin Avenue, Franklin Square	24
Nassau Road / N. Main Street, Uniondale to Freeport	25
Village of Freeport (except Merrick Road)	17
Merrick Road, Valley Stream to Massapequa	116

<u>Street or Area</u>	<u>No. of Units</u>
Village of Rockville Centre (except Merrick Road)	17
Long Beach Road / Austin Blvd	32
Village of Long Beach / Lido & Atlantic Beach	92
Willis Avenue, Mineola to Albertson	19
Broadway, Massapequa	18
Stewart Avenue, Bethpage	14
South Oyster Bay Road, Hicksville to Plainview	11
Woodbury Road, Hicksville to Woodbury	17
Dutch Broadway, North Valley Stream	9
Central Avenue, Valley Stream	10
Mill Road, Valley Stream	8
Broadway/West Broadway, 5 Towns	29
Bellmore Avenue, Bellmore	12
Post Avenue, Westbury	9
West John Street, Hicksville	11
Test Units, Traffic Control Center	6
Roosevelt Center, Westbury	6
Jerusalem Avenue, Hicksville	9
Elmont Road, Elmont	9

<u>Street or Area</u>	<u>No. of Units</u>
Burnside Avenue/Sheridan Boulevard, Inwood	8
Clinton Road/Stewart Avenue East, Garden City/Garden City East	17
Stewart Avenue West/Nassau Boulevard, Garden City	11
Oceanside Road/Brower Avenue/ Atlantic Avenue, Oceanside/Baldwin	15
Hempstead Avenue Malverne / West Hempstead	19
Peninsula Boulevard	47
Forest Avenue Glen Cove	17
Total number of Communications Units	<u>900</u>

APPENDIX V

CONTRACTORS REQUIRED EQUIPMENT INVENTORY

<u>Item No.</u>	<u>Description</u>	<u>Quantity</u>
670.1208	8 Foot Aluminum Single Member Arm (Bosch)	20 Each
683.030300NA	HD CCTV Top Mount Camera	10 Each
683.091000NA	24 Port SFP Ethernet Switch	4 Each
683.155100NA	Wi-Fi Travel Time Reader	10 Each
683.92150010	Fiber Optic Drop Cable, 12 Fiber	5,000 Feet
683.92104810	Fiber Optic Drop Cable, 48 Fiber	5,000 Feet
683.92107210	Fiber Optic Drop Cable, 72 Fiber	5,000 Feet
	5 Pair/19 Copper Comm. Cable IMSA 20.2	5,000 Feet

Storage space at Nassau County's Traffic Management warehouse will be made available to stock the equipment listed above. Equipment should be inventoried and delivered to the Traffic Management warehouse prior to the start of the contract and will remain in inventory until required for deployment.

SPECIAL PROVISIONS

1) Schedule

The contract shall be completed within thirty-six (36) months from the commencement of work date unless the County extends the original scope of work. In that event, the contract shall be extended to allow for the completion of additional work. The length of the extension shall be in proportion to the amount of work added. The length of the extension shall be the sole discretion of the County. The contractor is required to submit a Time/Money curve schedule for the entire duration of the project at the Preconstruction meeting. A copy needs to be provided to NYSDOT Construction.

2) Contractor Experience and Requirements

- a. The nature of the work involved in this contract requires the Contractor to possess prior satisfactory experience in the installation and maintenance of traffic signals. The proper operation of signals has critical public safety aspects.
- b. Prospective bidders (primary contractor) must have at least three (3) years of satisfactory experience in the actual installation and maintenance of considerable numbers and types of traffic signals and traffic control equipment.
- c. Prospective bidders must be trained and certified in the handling and the installation of the fiber optic cable, fiber optic splices, testing of fiber optic systems, and various other related items. The prospective bidder must be trained and certified by the fiber optic cable manufacturer, the manufacturer of the fiber optic splice enclosures, and the manufacturer of the fiber optic test equipment.

3) Maintenance of Traffic Signals

- a. All the traffic signal communications being improved, as part of this contract shall be maintained by the Contractor.
- b. All signal communications will be transferred to Contractor maintenance on the commence work date and will remain until termination of the contract.
- c. The Contractor shall be responsible to repair or replace any traffic signal equipment installed, which is damaged by any means. The Engineer shall approve repairs. Replacements shall meet all the contract specifications and requirements.

- d. The County will provide replacements for existing traffic signal equipment, which is to be retained under the provisions of the contract. Installations of the replacement equipment will be paid for under, Time and Materials.

4) Standards

New York State Traffic Signal Standard Specifications and Drawings” (Latest edition per letting date of the contract on the NYSDOT website) are made part of this contract.

5) Equipment Approval

All equipment furnished and/or installed by the Contractor shall be new and conform to the Traffic Signal Specifications and Standard Drawings” (latest edition) including painting. Catalog cuts and/or manufacturer name, model number, and description for all fiber optic related equipment, and all other furnished equipment, shall be submitted to Traffic Management, 1194 Prospect Avenue, Westbury, New York 11590, Attention Jeff P. Lindgren for approval, prior to installation as requested by the Department.

6) Recourse

This contract does not imply that the low bidder, following the award of this contract, has the exclusive right or legal recourse to the County of Nassau for any other similar type contract, or any other traffic signal interconnect contract which includes the furnishing and installation of traffic signal interconnect, that may be awarded during the life of this contract.

7) Maintenance and Protection of Traffic

- a. Where work is being constructed on streets, sidewalks, easements or other locations normally used by the public, the Contractor shall conduct his work so as to minimize the interference with the safe and direct movement of pedestrian and vehicular travel. The Contractor shall provide all necessary construction signs, fencing, barricades, and lighting as required by the Commissioner. The material and its placement shall conform to the latest edition of the “National Manual of Uniform Traffic Control Devices” with “New York State supplement” and directives of the County of Nassau. When directed by the Commissioner, the Contractor shall provide the safe means of crossing over trenches or obstacles within the work site either by bridging or other suitable structures.
- b. Accessibility to fire hydrants, police and fire call boxes, and provision for the ingress and egress of emergency vehicles including police, fire, and ambulance vehicles shall be required at all times.

- c. All work performed under this paragraph shall be at the Contractor's expense and at no additional cost to the County.
- d. No separate payments shall be made since all work for maintenance and protection of traffic shall be included in the unit prices bid for the various contract items.

8) Work Zone Traffic Control

- a. The Work Zone Traffic Control (WZTC) schemes should refer to NYSDOT Standard Specifications Section 619 and National Manual of Uniform Traffic Control Devices (MUTCD) with NYS Supplement. Standard sheets from Section 619 (nysdot.gov) can be used for guidance for shoulder and/or lane closures.
- b. No separate payments shall be made since all work for Work Zone Traffic Control shall be included in the unit prices bid for the various contract items. All traffic control devices, signs and pavement markings shall be NYSDOT approved products and materials.
- c. Workers, pedestrians and motorists should be accommodated and protected at all times within the entire project limits.

9) Underground Facilities

Before doing any work over, under, or near underground facilities, all provisions of Industrial Code Rule #753 of Title 12, of the Official Compilation of Codes, Rules, and Regulations of the State of New York, effective February 5, 1997 shall be strictly enforced and complied with.

10) Cleanliness

Upon completion of the work at each location or work order, the Contractor shall remove all remaining materials and shall leave the area, which may have been affected by his operation, in a neat and orderly condition.

11) Hold Harmless

- a. The Hold Harmless and Indemnification Provisions of this contract are to include, but not limited to, any civil action for damage brought against the County which the basis of such action is an allegation of (1) a malfunctioning traffic control device and/or (2) a defectively maintained traffic control device.

- b. The obligation of the Contractor to hold harmless and indemnify the County is absolute and shall not be dependent on the Contractor having received any actual notice from the County of any malfunctioning and/or defectively maintained traffic control device.

12) Transportation of Removed Equipment

All equipment removed from field locations shall be returned to the Traffic Management Warehouse at 3350 Merrick Rd, Seaford NY in the same condition as when removed from operation. All work related to removing existing equipment, and returning the same to the Traffic Management Warehouse shall be at the contractor's expense and at no additional cost to the County.

13) Additional Work – Extension of Contract

Public Works reserves the right to extend the terms of this contract at the accepted bid prices for either furnishing only or furnishing and installing when the successful bidder is notified within ninety (90) days of the date of approval of the catalog cuts. The extension shall not exceed 50% of the total price bid. All extra work must be in accordance with the latest NYS Standard Specifications, Section 109-05. The request for an extension of time by the contractor shall be submitted to NYSDOT Construction for their concurrence, only after the contractor has submitted a letter for time extension with a detailed explanation to Nassau County and Nassau County has agreed to the extension.

14) Contract Administration and Inspection

The Department of Public Works through the Division of Highways and General Engineering, Traffic Management will be the administrator of this contract and shall approve all equipment to be supplied, verify and approve all claim vouchers, and be responsible for furnishing all necessary inspections to verify compliance with the contract.

15) Funding

This contract is funded out of the Public Works Operating Budget and is eligible for Federal Aid reimbursement.

16) Payment

Payments of this contract will be made on a monthly basis for work completed during the preceding calendar month. No partial payments shall be made for material on hand and not installed. Retainage is not permitted on a local project receiving Federal Funding.

NO TEXT ON THIS PAGE

LPM

CHAPTER 12

CONSTRUCTION CONTRACT REQUIREMENTS

Contents

Appendices	4
12.1 INTRODUCTION.....	5
12.2 PROJECT MANAGEMENT.....	5
12.2.1 Construction Management Plan (CMP).....	5
12.2.2 Combination of Two or More Projects for Bidding Purposes.....	5
12.2.3 Bundling of Projects	6
12.3 CONTRACTOR’S BID PROPOSAL PACKAGE CONTENTS.....	6
12.3.1 Appendix 12-1 and Appendix 12-1A, Construction Contract Requirements.....	7
12.3.1.1 Non-Collusive Bidding and Other Certifications	7
12.3.1.2 Report of Violations of Non-Collusive Bidding or Other Prohibited Contract Activities.....	7
12.3.1.3 Certification for Federal-Aid Contracts: Lobbying Disclosure	7
12.3.1.4 Required Contract Provisions for Federal-Aid Construction Contracts (FHWA 1273).....	7
12.3.1.5 Offer Disclosure of Prior Non-Responsibility Determinations	8
12.3.1.6 Contract Bonds	8
12.3.1.7 Bid Deposit.....	8
12.3.2 Civil Rights Requirements.....	8
12.3.2.1 Disadvantaged Business Enterprise (DBE) Participation.....	8
12.3.2.2 Minority and Women-Owned Business Enterprises (M/WBE) and Service-Disabled Veteran-Owned Business (SDVOB) Programs	9
12.3.2.3 Equal Employment Opportunity (EEO) Requirements	9
12.3.2.4 Civil Rights Monitoring and Reporting	9
12.3.2.5 Title VI Assurances	9
12.3.3 Other Requirements.....	10
12.3.3.1 Authority Delegation.....	10
12.3.3.2 Insurance Provisions.....	10
12.3.3.3 Prevailing Wage Rates, Use of Convict Labor and Materials.....	10
12.3.3.4 Buy America Requirements and Waivers	11
12.3.3.5 Changed Conditions and Disputed Work Provisions.....	11
12.3.3.6 Retainage Provisions	11
12.3.3.7 Prompt Payment Provisions	12
12.4 MISCELLANEOUS REQUIREMENTS.....	12
12.4.1 Residency and Other Requirements	12
12.4.2 Specialized Experience Requirements.....	12
12.4.3 Wicks Law Requirements.....	12
12.4.4 Prequalification	13
12.4.5 Project Labor Agreement	13

12.4.6 Design-Build	14
12.4.7 Warranties and Specialty Items.....	14
12.4.8 Training and Apprenticeship Requirements.....	15
12.4.9 NYSDOT Oversight.....	15
12.5 CONTRACTING METHODS	15
12.5.1 Force Account Work by Sponsors	15
12.5.1.1 Public Interest Finding.....	16
12.5.1.2 Use of Sponsors' Equipment or Materials.....	16
12.5.2 Using Alternate Bidding.....	16
12.5.2.1 Format for Alternate Bidding.....	16
12.6 REFERENCES.....	19

NOTE: This Chapter has associated appendices and forms at:
<https://www.dot.ny.gov/plafap>

The web addresses for hyperlink words referenced throughout this Chapter (except LPM Chapter links) are on the last page under REFERENCE.

Appendices

Appendix

- 12-1 CONSTRUCTION CONTRACT REQUIREMENTS**
- 12-2 ADDITIONAL CONSTRUCTION CONTRACT REQUIREMENTS**
- 12-3 CONSTRUCTION MANAGEMENT PLAN**
- 12-4 PUBLIC INTEREST FINDING, INSTRUCTIONS, SAMPLE LETTER**
- 12-5 TRANSMITTAL OF CONTRACT BID DOCUMENTS AND PLANS, SPECIFICATIONS, AND ESTIMATE LETTER**
- 12-6 CONTRACT BID DOCUMENTS – PLANS, SPECIFICATIONS, AND ESTIMATE (PS&E) - CHECKLIST**
- 12-7 PROPOSAL COVER, TABLE OF CONTENTS, TITLE SHEET**
- 12-8 NYSDOT SHELF NOTES**
- 12-9 CERTIFICATION FOR PLANS, SPECIFICATIONS, AND ESTIMATE (PS&E)**
- 12-10 DBE COMMITMENT (Prior Appendix 14-9)**

12.1 INTRODUCTION

This Chapter describes the requirements that apply to construction contracts advertised, bid, and awarded by Sponsors. The requirements are from the United States Code of Federal Regulations (CFR), specifically Title 23, Highways, and Title 49, Transportation. Sponsors must adhere to the requirements of both CFR Titles 23 and 49 when using federal funds. [Chapter 3](#) of the Local Projects Manual (LPM) provides additional information on the Federal Highway Administration (FHWA) funded programs and eligibility.

12.2 PROJECT MANAGEMENT

12.2.1 Construction Management Plan (CMP)

As stated in [Chapter 2](#) of the LPM, NYSDOT requires all Sponsors to have a written Construction Management Plan (CMP) detailing how the construction contract will be administered. The plan describes how the Sponsor plans to provide adequate supervision and inspection, including materials inspection and acceptance, and independent quality assurance to ensure projects are completed in conformance with the approved plans and specifications.

The CMP is part of the overall Project Management Plan (PMP) (see [Chapter 2](#)). Title **23 CFR 635.105(c)(4)** requires a Sponsor to provide a full-time employee to be in responsible charge of the project even if using consultants to provide engineering and construction inspection services or project management. This full-time employee is referred to as the Project Manager (PM). The PM reports to the Responsible Local Official (RLO), who has ultimate oversight and responsibility for the project.

The PM and the RLO may be the same individual if the RLO has project management experience. However, since each Sponsor has different resources and each construction project is different, the minimum requirements to be included in each CMP are noted in Appendix 12-3.

If the CMP is not approved before letting, between contract letting and contract award, the Sponsor's PM, Engineer-in-Charge (EIC), Inspector(s), and the Regional Local Projects Liaison (RLPL) shall meet to modify the CMP to include information initially not available to the Sponsor.

The CMP should be updated to include a list of individuals involved, their qualifications, responsibilities, and supervision hierarchy. The CMP may be modified by agreement between the contractual parties as necessary due to personnel changes, changed conditions, scope changes, schedule changes, or other reasons. See Appendix 12-3 for the CMP template. NYSDOT must approve the CMP before contract award.

12.2.2 Combination of Two or More Projects for Bidding Purposes

Title **23 CFR 635.111** permits two or more federal-aid and state-aid financed projects to be tied (combined) for bidding purposes into one contract where it appears that more favorable bids may be received by doing so. All proposals submitted for tied projects must contain separate engineering shares for each project. Typically, the combination of projects is predetermined at the beginning of the project, with inclusion in the Project Management Plan. Care should be taken in determining the combination of the projects so that one will not delay the progress of the other (e.g., environmental issues, right-of-way concerns, schedule, funding availability). The Sponsor will coordinate the combination of two or more projects with the RLPL.

12.2.3 Bundling of Projects

Projects can be bundled for bidding purposes into one contract where it appears that more favorable bids may be received by doing so. Bundled projects must have an independent utility with an independent logical termini and do not rely on each other to be completed. This bundling is typically determined and combined as a single contract package at PS&E. In the event that a bundled project includes both a federal-aid funded project and a state-aid funded project, the entire bundled project will need to meet federal contract requirements, which include compliance with Buy America, DBE, and Federal Prevailing Wage Rates. NEPA re-evaluation prior to construction authorization will only be required on the federally funded projects included.

All proposals submitted must contain separate bid prices for each project. It will be vital to track the expenses to the separate engineering shares to ensure no federal funds are expended on any of the state-funded projects included. Reimbursement requests will need to be submitted clearly separating the items for each project/engineering share (including lump sum items.) If federal aid is expended on a state-funded project, then that project would need to be in compliance with all federal regulations, including NEPA.

12.3 CONTRACTOR'S BID PROPOSAL PACKAGE CONTENTS

Sponsors can begin preparing the Contractor's Bid Proposal Package as soon as they have received federal authorization for Detailed Design. This section addresses the major topics covered in the Contractor's Bid Proposal Package. Sponsors must ensure that they use the most recent version of Appendices 12-1 and 12-1A and that the package is organized sequentially. Appendix 12-7, Proposal Title Page, Table of Contents, and Project Title Sheet should be included. Appropriate Shelf Notes to be added can be obtained from the RLPL. See Appendix 12-8 for a list.

The contract plans (if applicable), specifications, and estimate (PS&E) are the outcome of the design stage. It is a summary of the final design information necessary for contract advertisement.

- **For contracts off the State Highway System or National Highway System (NHS)** - The Sponsor must document in writing to the RLPL that all requirements and appropriate appendices were included in the contract bid documents.
- **For contracts on the State Highway System or NHS** - Contract bid documents must be submitted to the RLPL for a completeness review and approval by the Regional Director (RD) and/or FHWA prior to contract advertisement.
- See Project Development Manual (PDM) Exhibit 4-2 and Exhibit 4-3 for approval requirements.

The Contract Bid Document Transmittal Letter (see Appendix 12-5) is used to transmit to NYSDOT all required documents and information necessary to progress the project to the construction phase. The Sponsor provides the completed Contract Bid Documents – Plans, Specifications, and Estimate (PS&E) Checklist (see Appendix 12-6) and PS&E Certification (Appendix 12-9) to NYSDOT for review. It is recommended that the documentation associated with NEPA Re-Evaluation also be submitted with the Contract Bid Documents. Refer to Appendix 11 of the PDM.

Appendix 12-2 Additional Construction Contract Requirements must be included in their entirety in all federally aided construction contract bid proposals that do not use NYSDOT Standard Specifications. See LPM [Chapter 9](#) Section 9.3 Construction Specifications for additional information.

12.3.1 Appendix 12-1 and Appendix 12-1A, Construction Contract Requirements

Appendix 12-1 and Appendix 12-1A, Construction Contract Requirements, contain sworn written statements from the contractor to the Sponsor regarding conditions set by the Sponsor. Appendices 12-1 and 12-1A, in their entirety, must be included in all construction contract bid proposals. By signing the Combined Certification Form of Appendix 12-1A, the contractor certifies that the contents are true.

12.3.1.1 Non-Collusive Bidding and Other Certifications

Collusion is defined as any activity that artificially affects prices when bidding on a contract or activity that restricts competition among bidders or potential bidders by exchanging or sharing information with firms presumed to be competing for the same contract. Title **23 CFR 635.112(f)**; **New York State Finance Law (SFL) Article 9, §139-d** and **General Municipal Law (GML) Article 5A, §103-d** require non-collusive bidding and other certifications in all construction contracts. The above laws require bidders to certify that the bid submitted was arrived at without resorting to any collusive bidding practices.

Additionally, federal law requires bidders to certify that they are eligible to compete for contracts under federal regulations and are not under the sanction of any federal agency, nor are any sanctions pending against the firm or owner of the firm. Title **2 CFR 1200** also requires the bidder to certify that they have not been subject to legal action regarding fraud or misconduct.

A sample signature page (see Appendix 12-1A, Non-Collusive Bidding Certifications) allows for one signature to provide multiple certifications. NYSDOT recommends using this form to simplify signing for various certifications for the same contract.

12.3.1.2 Report of Violations of Non-Collusive Bidding or Other Prohibited Contract Activities

The laws noted in the **Non-Collusive Bidding Requirements** section encourage any person with knowledge of collusive bidding or other misconduct by others to report possible violations to the appropriate federal and/or state authorities. Reporting Violations of Non-Collusive Bidding Procedures Misconduct or Other Prohibited Contract Activities provides information on how to report such activities; and must be submitted with all federal-aid construction contracts.

12.3.1.3 Certification for Federal-Aid Contracts: Lobbying Disclosure

Title **23 CFR 635.112(g)** requires contractors or firms intending to conduct business with the federal government or participate in contracts funded with federal aid to disclose all lobbying activities.

12.3.1.4 Required Contract Provisions for Federal-Aid Construction Contracts (FHWA 1273)

All federal aid highway contracts are bound by various federal laws, rules, regulations, and presidential executive orders. These requirements address issues such as:

- General contract administration,
- Non-discrimination,
- Non-segregated facilities,
- Payment of predetermined minimum wage,
- Statements and payrolls,
- Records of materials,
- Supplies and labor,
- Subletting and assigning of the contracts,
- Safety and accident prevention,

- False statements concerning highway projects,
- Clean air and water pollution control,
- Contractor lobbying activities; and
- Other aspects of the contract and/or contractor responsibilities.

[FHWA-1273, Required Contract Provisions Federal-Aid Construction Contracts](#) includes detailed descriptions and explanations of these requirements and must be included verbatim in all federal aid highway contract packages (see Appendix 12-1).

12.3.1.5 Offer Disclosure of Prior Non-Responsibility Determinations

As part of the Contractor's Bid Proposal Package, **SFL Article 9, §139j** and **139k** require contractors to complete the Offerors Disclosure of Prior Non-Responsibility Determinations form affirming that all information provided to the Sponsor is complete, true, and accurate. The form must be completed and submitted by the individual or entity seeking to enter into a Procurement Contract, Supplement or Change Order.

12.3.1.6 Contract Bonds

GML Article 5A, §103-f, and **Standard Specifications §103-03** require the contractor to provide the Sponsor with a Faithful Performance Bond and a Labor and Material Bond from a Surety Company. The contractor shall procure and deliver bonds to the Sponsor and maintain them at their own expense and without expense to the Sponsor until final contract acceptance by the Sponsor. See the Standards Specifications noted for additional information.

12.3.1.7 Bid Deposit

Bidders must submit a bid bond with each proposal for a federally aided contract. The bid bond guarantees that the bidder will enter a contract with the Sponsor for work if a Sponsor accepts a bidder's proposal. Each proposal shall be accompanied by a certified check or a bank cashier's check for a specified amount payable to the Sponsor (see NYSDOT's **Standard Specifications §102-06** and **GML, Article 5A, §102**). Bid deposits will be returned within 30 days after award to non-awarded bidders.

12.3.2 Civil Rights Requirements

12.3.2.1 Disadvantaged Business Enterprise (DBE) Participation

Under **49 CFR 26**, the Sponsor will ensure that the contract includes a Disadvantaged Business Enterprise (DBE) participation goal in accordance with NYSDOT's current [DBE Plan](#). The DBE Program Plan is approved by FHWA and establishes contract goals by geographic location and project work type. When a construction contract is funded wholly or partially with federal funds, only a DBE goal is assigned to the contract; no other State or local business enterprise goals (no M/WBE goal) can be assigned. The DBE Goal Setting Procedures (Local Program) on the NYSDOT Office of Diversity and Opportunity website linked below detail how a DBE Goal is to be set on local projects. As referenced in the procedures; to set the DBE goal, Sponsors will use the table of Construction Contract Groups, Multi-Regional (Market Area) Map, and the Baseline DBE Goal Selection Chart in the Goal Setting Tools. These forms and instructions are found on NYSDOT's Office of Diversity and Opportunity [website](#).

12.3.2.1.1 Instructions to Bidders Regarding DBE Participation

NYSDOT Standard Specification §102-12 (DBE Participation Package), indicates that all bidders shall submit a complete DBE Participation Package with their proposal. The DBE Participation Package shall include confirmed DBE commitments; DBE confirmation on provided forms (i.e., AAP 20, AAP 22, and AAP23), for each DBE firm for the kind and amount of work shown in the Bidder's commitments; and good faith effort documentation (if required). No additions, substitutions or deductions to the DBE commitments identified at time of letting will be considered as part of the DBE Participation Package. See Appendix 12-10 DBE Commitment AAP 14LL (previously Appendix 14-9) to assist the Sponsor in collecting the information from proposed bidders.

In addition, per 49 CFR 26.11, all Bidders shall submit with their bid proposal a Bidder's List (i.e., CONR 80LL Bidder's List Appendix 12-11) which contains information for all Subcontractors, both DBEs and non-DBEs, who provided quotes on the contract. The Bidder's List shall include the Subcontractor's name, work code applicable to each scope of work the Subcontractor sought to perform in its quote, and additional Subcontractor information. Failure to submit the required Bidders List information may result in rejection of the bid.

12.3.2.2 Minority and Women-Owned Business Enterprises (M/WBE) and Service-Disabled Veteran-Owned Business (SDVOB) Programs

All contracts entered into by the Sponsor that is wholly funded with state funds must be assessed to determine appropriate M/WBE and SDVOB goals. For detailed information on M/WBE and SDVOB goal setting, see LPM [Chapter 13](#) Appendix 13-5 and 13-6.

12.3.2.3 Equal Employment Opportunity (EEO) Requirements

Per Title **41 CFR 60** and **23 CFR 230**, the Sponsor will ensure contracts with an Engineer's Estimate of \$10,000 or more include EEO workforce utilization goals. Their contractor shall not discriminate against any employee or applicant for employment. EEO utilization refers to workforce makeup, including women and minorities. The contract goal for minorities varies; it is dependent upon the county or counties in which the work is located. The female EEO participation goal is 6.9% throughout the State of New York. EEO requirements apply to prime contractors and their subcontractors. See Appendix 12-1.

12.3.2.4 Civil Rights Monitoring and Reporting

All civil rights reporting is to be performed utilizing NYSDOT's approved civil rights reporting software, EBO (Equitable Business Opportunities Solution). Sponsors must submit an EBO access form to the RLPL with their contract bid. Information concerning EBO is found online at <https://www.dot.ny.gov/dotapp/ebo>. Sponsors should contact their RLPL for additional assistance with EBO.

12.3.2.5 Title VI Assurances

The Title VI Assurances contained in *APPENDIX A-1 SUPPLEMENTAL TITLE VI PROVISIONS (CIVIL RIGHTS ACT)* must be physically inserted into all federal aid contracts and subcontracts. Therefore, it may not be included by reference.

12.3.3 Other Requirements

12.3.3.1 Authority Delegation

Locally administered federal aid transportation projects will use the current NYSDOT Standard Specifications detailed in LPM [Chapter 9](#) Section 9.3. Modifications to the specifications will require written approval from NYSDOT. See [Chapter 9](#), Section 9.3.3 for more information on special specifications.

NYSDOT Standard Specifications refer to NYSDOT employees (Chief Engineer, Deputy Chief Engineer Structures, etc.) and functional units (Structures, Traffic, and Safety, etc.) to provide for approvals or to perform functions. Sponsors may or may not have access to these resources. Depending on NYSDOT's level of oversight and/or capacity to perform the work, functional unit actions identified in NYSDOT specifications may need to be performed by contract. For example, subsurface exploration would be performed by an approved Geotechnical Consultant if NYSDOT's Geotechnical Engineering Bureau does not have the capacity for the necessary work. Costs and confirmation of availability must be identified in Schedule A of the State Local Agreement before scheduling NYSDOT technical services.

Approval authority is delegated to the Responsible Local Official (RLO) by Municipal Resolution attached to the State-Local Agreement. If the RLO is not a Licensed Professional Engineer, the RLO will recommend the plans, specifications, and estimate based on certification provided by a Licensed Professional. These delegated authorities, approvals, and functional unit actions or subcontracting shall be approved by the RLPL and documented in the Project Management Plan and the Construction Management Plan.

12.3.3.2 Insurance Provisions

The following insurance provisions are required when contractors, subcontractors, and their suppliers intend to conduct business in New York State:

- Workers' Compensation
- Disability Insurance
- Commercial General Liability Insurance
- Commercial Automobile
- Umbrella or Excess Liability
- Special Protective and Highway Liability

Sponsors may require other insurances, depending on the work being performed, including Professional Liability/Errors and Omissions, Railroad Protective, Marine Protection and Indemnity, Pollution Liability, and Builder's Risk.

All required insurance policies, except worker's compensation and professional liability, shall be endorsed to provide coverage to "The Sponsor, 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 any consultants working for or on the project, and their agents or employees." See NYSDOT's **Standard Specifications §107-06** for more details.

12.3.3.3 Prevailing Wage Rates, Use of Convict Labor and Materials

Federal and state contracts must include requirements regarding prevailing wage rates, various employment practices, and the use of convict-produced materials (see NYSDOT **Standard Specifications §102-10**).

Federal wage rates must be obtained online from the official federal contracting [Wage Determinations Online website](#). The federal wage rates must be physically inserted into the contract proposal. The federal wage rates must be updated by addendum within 10 days or more before the letting,

New York State prevailing wage rates can be found online at the [New York State Department of Labor's website](#). A Prevailing Rate Case number (PRC) will be issued. If the same request is submitted multiple times, the Sponsor will be assigned a different PRC each time for the same project. Only the first four pages of the most current state wage rates, including the PRC number, need to be included in the proposal. Contractors are obligated to pay the higher of the two as both are stated as minimum rates.

12.3.3.4 Buy America Requirements and Waivers

Title **23 CFR 635.410, 23 USC 313, and the Build America Buy America (BABA) Act in Title IX of the Bipartisan Infrastructure Law's (BIL)** require all bidders for federal aid contracts to submit bids based on furnishing domestic materials per Standard Specifications §106-11 *Buy America*. The contract will be awarded to the bidder who submits the lowest total bid based on the Buy America requirements as detailed in Standard Specifications §106-11 *Buy America*. This includes any federal aid in any project phase regardless of whether federal aid will be applied to construction. Buy America also applies to general utility installations and municipal utilities if federal funds are involved in any project phase.

At the request of the Sponsor, NYSDOT may request from FHWA a waiver of the provisions of this section if it meets the waiver requirements as noted in Standard Specifications §106-11 *Buy America*. The submittal of a waiver request requires an extensive review and approval by FHWA and does not guarantee that a waiver will be granted.

A Sponsor may use the alternative bidding procedure to justify the use of foreign materials without requesting a waiver. Under this procedure, the total project is bid with two alternatives: one which is based on foreign source materials while the second alternative requires domestic materials. All bidders must submit a bid using domestic source materials and have the option of submitting a bid using foreign source materials. The use of foreign products is justified if the lowest total bid with domestic products is at least 25 percent more than the lowest bid with foreign source products. The 25 percent differential applies to the total bid for the entire project, not just the bid prices for items with domestic materials detailed in Standard Specifications §106-11 *Buy America*.

12.3.3.5 Changed Conditions and Disputed Work Provisions

Title **23 CFR 635.109**, "Standardized Changed Conditions Clauses," requires all FHWA funded contracts let by NYS agencies, municipalities, and/or public authorities to provide processes for equitable contract adjustments and contract disputes. Title **23 CFR 635.109** also contains three contract clauses (found in NYSDOT's **Standard Specifications §104-03, Standard Specifications §104-04, and Standard Specifications §104-05**) which must be included verbatim in each federal aid construction contract. These clauses are included in all federally funded local projects by reference to the NYSDOT Standard Specifications.

12.3.3.6 Retainage Provisions

SFL Article 9, §139-f, and GML Article 5-A, §106-b does not require NYSDOT and Sponsors to hold retainage from contractors or permit the contractor to withhold retainage except for work not completed on NYSDOT administered contracts. Therefore, the limits on retainage as provided in

GML Article 5-A, §106-b cannot be applied by the Sponsor. In accordance with Standard Specification 109-07 Prompt Payment, the Sponsor must ensure that the Contractor does not hold any. See [LPM Chapter 5.3.1.4](#) Retainage Policy.

12.3.3.7 Prompt Payment Provisions

GML Article 5-A, §106-b, and **SFL Article 9, §139-f** require the contractor to pay their subcontractors and suppliers within seven (7) calendar days of receipt of payment from the Sponsor and provide for interest on late payments for all public works contracts. See [LPM Chapter 5.3.1.3](#) Prompt Payment Policy. The prime contractor's date of payment to subcontractors is the date that payment is sent to the subcontractors; this date is recorded in EBO. Subcontractors are required to acknowledge these payments in EBO promptly. Contract provisions stating any other payment schedule will not be allowed; contracts cannot supersede State Finance Law. In accordance with Standard Specification §109-07 *Prompt Payment*, the Contractor will not withhold payment to subcontractors or DBE/MBE/WEB/SDVOB's due to disputes about the quantity of work performed. See Construction Administration Manual (MURK Part 1A) for additional information.

12.4 MISCELLANEOUS REQUIREMENTS

12.4.1 Residency and Other Requirements

Title **23 CFR 635.110(b)** prohibits the Sponsor from imposing unusual contract specifications, including requirements for an award or submitting a bid, such as residency requirements or geographical or other restrictions, which tend to restrict competition. Such requirements cannot be part of the solicitation for bids or the bid proposal package nor appear in any advertisement for bids.

12.4.2 Specialized Experience Requirements

The special requirements for determining the lowest responsible bidder should be clear, reasonable, and consistent with standard industry practices. For instance, on a project involving historic preservation, several years of experience in the historic preservation field, or at least three completed historic preservation contracts similar in size and scope would be a reasonable requirement. However, special expertise cannot be written to preclude any bidder from submitting a bid and can only be used to determine the lowest responsible bidder. Below is an example of an appropriate clause for historic preservation work which may be included in a bid proposal package.

Due to the highly sensitive nature of the historic preservation work in this contract, as a condition of the award, bidders must have at least _____ years' experience working with historic (timber, iron, etc.) structures (bridges, buildings, etc.), including work on similar contracts or structures. In addition, the bidder must include a list of current and previously completed historic preservation contracts in its bid package, including the name of the contract owner, a contact person, and telephone number so that references can be verified. The contract will be awarded to the lowest responsible bidder who meets the experience specifications.

12.4.3 Wicks Law Requirements

Known as Wicks Law, **GML Article 5-A, §101** and **SFL Article 9 §135**, applies to State agencies, certain public benefit corporations, municipalities, school districts, and boards of cooperative educational services but does not apply to private building construction. This is a New York State statute, and NYSDOT has no authority to grant waivers. The law applies if a construction contract involves building construction and the total construction contract value exceeds:

- \$3 million in Bronx, Kings, New York, Queens, and Richmond Counties,
- \$1.5 million in Nassau, Suffolk, and Westchester Counties, or

- \$500,000 in all other counties in New York State.

GML Article 5-A, §101 requires the contract owner (Sponsor) to bid and execute separate contracts for general construction, plumbing, heating/ventilating/air conditioning, and electrical components for building construction. For any project which does not meet the above thresholds and is not let with separate contracts, this law applies in the following ways:

- All bidders must submit with their bids a sealed list of the subcontractors that will perform the plumbing, H/V/AC, and electrical work.
- The successful low bidder's sealed list will be opened, and the Contractor is required to use the list of subcontractors unless there is a legitimate construction need to change the subcontractor. The Sponsor's approval is required for a change to be made.
- The sealed lists are returned unopened to the non-selected bidders.

12.4.4 Prequalification

GML Article 5-A, §103 allows political subdivisions (municipalities) with populations over 50,000 to prequalify bidders. The prequalification program establishes guidelines governing the qualifications of bidders for construction/procurement contracts. These programs are allowed if the Sponsor maintains an appropriate list of qualified bidders who meet the Sponsor's established standards. Indication of the use of a pre-qualified bidder must be noted in the advertisement of the project. The established standards shall consider the prospective bidders' experience and the past performance of work completed by the prospective bidders as well as:

1. The prospective bidders' ability to undertake the type and complexity of work,
2. The financial capability, responsibility, and reliability of the prospective bidders for such type and complexity of work,
3. The record of the prospective bidders in complying with existing labor standards and maintaining harmonious labor relations,
4. The prospective bidders' compliance with equal employment opportunity requirements and anti-discrimination laws, and demonstrated commitment to working with disadvantaged businesses through joint ventures of subcontractor relationships; and
5. The record of the prospective bidders in protecting the health and safety of workers on public works projects and job sites as demonstrated by the prospective bidders' [Workers Compensation Experience Modification Rate](#) for each of the last three years.

The Sponsor's prequalification process must have a documented appeal process for firms denied a place on a pre-qualified list. In addition, NYSDOT must review and approve any prequalification provisions.

12.4.5 Project Labor Agreement

NYS Labor Law Article 8, §222 allows Sponsors to use a Project Labor Agreement (PLA) when it has been determined that the Sponsor's interest in obtaining the best work at the lowest possible price, preventing favoritism, fraud, and corruption, and other considerations such as the impact of delay, and the possibility of costs savings are best met by requiring a PLA. Project Labor Agreement shall mean a pre-hire collective bargaining agreement between a contractor and a bona fide building and construction trade labor organization. The trade labor organization is the collective bargaining representative for all persons who will perform work on a public works project. Only contractors and subcontractors who sign a pre-negotiated agreement with the trade labor organization can perform project work.

It should be noted that any project undertaken with a PLA shall:

- For design, be subject to the review and approval of the Sponsor; and the design and construction standards are subject to the review and approval of NYSDOT,
- Contain a provision that the contractor shall furnish a labor and material bond guaranteeing prompt payment and a performance bond for the faithful performance of the project,
- Participate in an apprentice training program if the project exceeds the noted values under **NYS Labor Law Article 8, §222**.

The use of a PLA must :

- Be consistent with **23 United States Code (USC) 112**,
- Lead to a more effective use of federal funds; and
- Be in compliance with all **Title 23** and **Title 49 USC** and **CFR** requirements.

To accomplish consistency and compliance with the referenced codes, a complete study, analysis, and report must be prepared by an independent consultant retained by the Sponsor who is experienced in the development and implementation of PLA's and has not been retained to perform the design of the project. The consultant must conduct a thorough project analysis of the costs/benefits of a PLA and document specific facts and figures in the Due Diligence Impact Study Report.

NYSDOT will review all PLA's prior to submitting to FHWA for approval, including Design-Build. The final report must be provided to the RLPL to be included in the project files.

The NYS Office of General Services (OGS) has a contract for Project Labor Agreement Services that Sponsors may use to select a firm. The Sponsor must use the mini-bid process to solicit a cost estimate from all on the list before selecting one firm. If a Sponsor uses the OGS Contract, the federal requirements as found in Appendices 12-1 and 12-1A must be incorporated into the contract. Therefore, the Sponsor would be eligible for reimbursement only if the federal requirements are incorporated into the contract.

12.4.6 Design-Build

The "[New York City Public Works Investment Act of 2019](#)" authorized the New York City's Department of Design and Construction and Department of Transportation to undertake public work projects pursuant to project labor agreements that cost \$10 million or more, use of the alternative delivery method known as Design-Build contracts. The [New York State Department of Transportation Design-Build Procedures Manual](#) provides the procedures to be followed. No other Sponsor is permitted at this time to utilize Design-Build as an alternative delivery method.

12.4.7 Warranties and Specialty Items

Title 23 CFR 635.413 generally prohibits the Sponsor from requiring a contractor to warrant or guarantee its overall workmanship for some time after the contract work is accepted. Warranties and guarantees are not allowed on federal aid contracts and should not be part of the contract bid proposals. Warranties for routine maintenance items not within the control of the contractor are prohibited. Specific Sponsor requests to use warranty clauses must be submitted to the RLPL for NYSDOT approval before Contract Bid Document Package submission. Standard manufacturers and suppliers' warranties on installed equipment and materials are allowed under federal regulations without additional approval. See **Standard Specifications §105-18** and **§105-19** for more information.

12.4.8 Training and Apprenticeship Requirements

Training is one of the Civil Rights activities that may be used to address the under-utilization of minorities, females, and economically disadvantaged persons in highway construction and engineering contracts. The Sponsor must include Item 691 Training and Apprenticeship Requirements if the construction cost is estimated above \$5M. It should be noted that if the construction cost is below \$5M and there is an opportunity for training, the item may be included. The program requirements must be reviewed and approved by both NYSDOT and FHWA. Only FHWA-approved On-the-Job Training (OJT) programs or NYS Department of Labor (NYSDOL)/U.S. Department of Labor (USDOL) registered apprenticeship programs may be used to fulfill training requirements. The review and approval processes are extensive; therefore, appropriate time should be allocated for the approval process. Sponsors should coordinate with their RLPL. See Highway Design Manual (HDM) 21.4.3.2 Training Requirements.

12.4.9 NYSDOT Oversight

There are times where different phases of the project, such as preliminary design, detailed design, right-of-way, construction inspection, or construction, are not funded with federal funds. If the construction phase is not advanced with federal funds, NYSDOT must provide oversight and ensure compliance in the areas of Environmental Commitments, Right-of-way (ROW) Requirements/Acquisition, and Buy America provisions.

12.5 CONTRACTING METHODS

Title **23 CFR 635** describes federal regulations governing construction contracts let by a Sponsor for which the Sponsor anticipates federal reimbursement. Title **23 CFR 635.104(a)** requires construction contracts to be awarded to the lowest responsible bidder, as determined by a competitive bidding process. The Sponsor must comply with federal aid competitive bidding requirements. NYSDOT is the primary recipient of FHWA funding. When receiving federal funds, NYSDOT must monitor and assure compliance with federal regulations on contracts initiated by a project Sponsor or subcontracts initiated by a contractor.

Failure to comply with all federal and state laws, rules, regulations, and federal presidential and state gubernatorial executive orders may result in the loss of federal aid and removal of NYSDOT and/or FHWA participation from the project. In addition, the State may deduct other state or federal aid due to the Sponsor's future payments. Refer to [Chapter 4](#), Local Project Agreements, for rules and regulations regarding possible repayment of funds to NYSDOT. For additional requirements regarding construction contract administration and compliance, see [Chapter 15](#).

Costs found to be ineligible after payment was made to the Sponsor must be repaid to New York State. NYSDOT will reduce current or future reimbursement claims on the same or other projects the Sponsor may have with NYSDOT if the Sponsor fails to repay.

12.5.1 Force Account Work by Sponsors

Title **23 CFR 635.104(a)** requires competitive bidding for construction contracts unless provided in **23 CFR 635.104(b)**, some other method is more cost-effective. Force Account Construction by the Sponsor is one method utilized. Title **23 CFR 635.201-205** documents the federal requirements for Force Account Construction. NYSDOT or FHWA must approve all requests to use Force Account Work on local let construction projects.

12.5.1.1 Public Interest Finding

Title **23 CFR 635.104(b)** provides the option for a Sponsor to determine if it is more cost-effective to use its resources to perform the work adequately than competitive bidding on a local-let, federally aided construction contract (i.e., Force Account Work). The Sponsor must submit to the RLPL in writing a request justifying why "no-bid force account work" is necessary. This can be justified by showing how it is cost-effective to use the Force Account method vs. competitive bidding (e.g., during emergency conditions). This request is called a Public Interest Finding (PIF).

- For projects OFF the National Highway System (NHS), the PIF will be submitted to NYSDOT for approval.
- For projects ON the NHS, the PIF will be submitted by NYSDOT to FHWA for approval. See Appendix 12-4 for the PIF form, instructions, and transmittal letter.

12.5.1.2 Use of Sponsors' Equipment or Materials

Generally, Sponsors cannot require the prime contractor to use the Sponsor's equipment or materials as a condition or pre-condition of awarding the contract. However, if documented in the PIF, exceptions may be allowed by NYSDOT or FHWA. Equipment must be acquired through competitive bidding or produced by municipal forces. The Contractor must have the option to use their own equipment. Cost for equipment must be based on rental rates or unit prices, and points of availability shall be documented in the Contract Bid Package.

Note: Sponsors cannot profit from the rental of their equipment or materials.

12.5.2 Using Alternate Bidding

If the Sponsor utilizes an alternate bid process to stay within budget limits, the alternate bid process must be clearly described in the bid proposal. A Sponsor cannot use an alternate process where the Sponsor may arbitrarily choose from among the alternate bid items. An arbitrary process may create an impression of impropriety. FHWA has accepted the method described in the Alternate Bidding Section of this chapter.

A Sponsor may choose alternate bidding to maximize the benefits of the funding available for a contract. In general, the concept allows for Contractors to bid on the elements of the basic contract scope (base bid) first as well as submit bids on work outside of the basic contract scope: the alternate bid items. These alternates can be either additions or deletions from the basic contract scope. Bids on the basic scope of the contract and the alternate items are submitted at the same time and opened at the same time.

If the Sponsor receives a bid on the basic scope which is less than the Engineer's Estimate for the basic scope, bids on the alternate items are considered according to a predetermined order of priority, so long as the total bid price remains under the total contract budget (see Scenario #1). Conversely, if all bids exceed the Engineer's Estimate, Sponsors may delete alternate bid items, subject to a priority ranking, to stay within the contract budget (see Scenario #3).

12.5.2.1 Format for Alternate Bidding

The use of alternate bid items is permissible under strict budgetary circumstances. To assure bidders of the integrity of the competitive bid process, the criteria and formula for determining the low bidder in an alternate bid process must be fully and clearly described in the bid proposal documents.

The bid solicitation must advise potential bidders that alternate bidding will be used. Whether adding or deleting alternate items, the Sponsor must prioritize the alternate bid items and follow a rational sequence when selecting the alternate items. The Sponsor is not free to pick and choose among the alternates. The following format must be adhered to.

EXAMPLE: If a budgeted figure cannot be exceeded, the total budget figure should be announced at the public bid opening just prior to opening the bids. The bid proposal should state the criteria on which award will be based as follows:

- If any bids for the base bid plus Alternates 1-3 come under the budget figure, the award will be made based on the base bid plus Alternates 1-3; however,
- If all bids for the base bid plus Alternates 1-3 exceed the budget figure, the award will be based on the base bid plus Alternates 1 and 2; however,
- If all bids for the base bid plus Alternates 1 and 2 exceed the budget figure, the award will be based on the base bid plus Alternate 1; however,
- If all bids for the base bid plus Alternate 1 exceed the budget figure, the award will be based on the base bid only; however,
- If all bids for the base bid exceed the budget figure, the award will be based on the base bid and Alternate 4 (deduct item); however,
- If all bids for the base bid and Alternate 4 (deduct item) exceed the budget figure, the award will be based on the base bid and Alternates 4 and 5 (deduct items); however,
- If all bids for the base bid and Alternates 4 and 5 (deduct items) exceed the budget figure, the award will be based on the base bid plus Alternates 4, 5, and 6 (deduct items)

Scenarios #1, #2, and #3 below illustrate the above example in determining the low bidder when alternate bid items are used.

SCENARIO #1

BUDGET FIGURE \$200,000

BIDDER	BASE BID	ALT.#1	ALT.#2	ALT.#3	TOTAL
A	\$150,000	\$20,000	\$20,000	\$20,000	\$210,000
B	\$170,000	\$15,000	\$ 7,000	\$ 7,000	\$199,000
C	\$185,000	\$17,000	\$10,000	\$ 3,000	\$215,000
D	\$175,000	\$18,000	\$ 5,000	\$15,000	\$213,000

BIDDER B is the low bidder, using base bid plus Alternates 1-3, for a total of \$199,000.

SCENARIO #2

BUDGET FIGURE \$200,000

BIDDER	BASE BID	ALT.#1	ALT.#2	ALT.#3	TOTAL
A	\$196,000	\$ 8,000	\$ 8,000	\$ 8,000	\$220,000
B	\$192,500	\$10,000	\$ 2,000	\$ 8,000	\$212,500
C	\$194,000	\$11,000	\$ 6,000	\$ 9,000	\$220,000
D	\$190,000	\$15,000	\$ 5,000	\$15,000	\$225,000

BIDDER D is the low bidder based on the base bid only. All other applications of the formula exceed the budget figure.

SCENARIO #3

BUDGET FIGURE \$200,000

BIDDER	BASE BID	ALT.#1	ALT.#2		ALT.#3	ALT.#4	ALT.#5	ALT. #6
A	\$220,000	\$ 8,000	\$ 9,000		\$ 8,000	(\$10,000)	(\$10,000)	(\$10,000)
B	\$225,000	\$ 7,000	\$ 7,000		\$ 8,000	(\$ 8,000)	(\$ 7,000)	(\$ 8,000)
C	\$215,000	\$10,000	\$ 7,000		\$ 6,000	(\$10,000)	(\$ 6,000)	(\$ 5,000)
D	\$230,000	\$10,000	\$10,000		\$ 7,000	(\$12,000)	(\$10,000)	(\$ 8,000)

BIDDER C is the low bidder, based on the base bid plus Alternates 4 and 5 (\$215,000 minus \$10,000) (Alt. #4) and minus \$6,000 (Alt. #5), total price \$199,000 following the formula.

12.6 REFERENCES

Federal Laws and Regulations

[USC Title 23](#) United States Code – Title 23 Highways
[USC Title 49](#) United States Code – Title 49 Transportation
[Code of Federal Regulations](#) Code of Federal Regulations
[2 CFR 1200](#) Debarment
[23 CFR 112](#) Letting of Contracts
[23 CFR 230](#) External Federal Highway Programs
[23 CFR 635](#) Construction and Maintenance
[23 CFR 635.104\(a\)\(b\)](#) Method of Construction
[23 CFR 635.105\(c\)\(4\)](#) Supervising agency
[23 CFR 635.109](#) Standardized changed condition clauses
[23 CFR 635.110\(b\)](#) Licensing and qualification of contractors
[23 CFR 635.111](#) Tied Bids
[23 CFR 635.112\(e\)\(f\)\(g\)](#) Advertising for bids
[23 CFR 635.114\(a\)](#) Award of contract and concurrence in the award
[23 CFR 635.201-205](#) Force Account Construction
[23 CFR 635.410](#) Buy America requirements
[23 CFR 635.413](#) Guaranty and warranty clauses
[41 CFR 60](#) (Equal Opportunity Clauses – Compliance Reports
[49 CFR 20.100](#) Conditions on use of funds
[49 CFR 26](#) Disadvantaged Business Enterprises, (DBE)

State Laws and Regulations (State Finance Law, (SFL) & Labor Law)

[Article 9, Section 135](#) Separate specifications for contract work
[Article 9, Section 139-d](#) Statement of non-collusion in bids to the state
[Article 9, Section 139-f](#) Payment on public work projects
[Article 9, Section 139-j](#) Restrictions on contracts during the procurement process
[Article 9, Section 139-k](#) Disclosure of contracts and responsibility of offers
[Article 9, Section 146](#) Certain construction contracts involving steel
[NYS Labor Law, Article 8, Section 222](#) Project Labor Agreements, (PLAs)

General Municipal Laws and Regulations (General Municipal Law (GML))

[Article 5-A, Section 101](#) Separate specifications for certain public work
[Article 5-A, Section 102](#) Deposits on plans and specifications
[Article 5-1, Section 103](#) Political Subdivisions
[Article 5-A, Section 103-d](#) Statement of non-collusion bids
[Article 5-A, Section 103-f](#) Security bonds on municipal projects
[Article 5-A, Section 106-b](#) Payment on public work projects

Other:

FHWA Contract Administration Core Curriculum Manual (Buy America)
<https://www.fhwa.dot.gov/programadmin/contracts/cacc.pdf>

FHWA Project Labor Agreements
<https://www.fhwa.dot.gov/construction/contracts/100507.cfm>

FHWA-1273, Required Contract Provisions Federal-Aid Construction Contracts
<https://www.fhwa.dot.gov/programadmin/contracts/1273/1273.pdf>

MURK Part 1A Contract Administration Manual (CAM)
https://www.dot.ny.gov/main/business-center/contractors/construction-division/forms-manuals-computer-applications-general-information/murk_1a

New York State Department of Labor's Prevailing Work and Public Wage
<http://labor.ny.gov/workerprotection/publicwork/PWRateSch.shtm>

US Government Wage Determinations
<https://sam.gov/wage-determinations>

Workers Compensation Experience Modification Rate
<http://www.safetymanagementgroup.com/emr-experience-modification-rate.aspx>

APPENDIX 12-1

CONSTRUCTION CONTRACT REQUIREMENTS

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CONTENTS

CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY, AND VOLUNTARY EXCLUSION (FHWA Section 1273 X)..... 1

CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING(FHWA 1273 Section XI)..... 1

FALSE CLAIMS CERTIFICATION (31 USC §3729, NYS Finance Law Article 13) 2

REPORTING VIOLATIONS OF NON-COLLUSIVE BIDDING PROCEDURES, 5

GOALS FOR EQUAL EMPLOYMENT OPPORTUNITY (EEO) PARTICIPATION 6

REQUIRED CONTRACT PROVISIONS 7

ALL FORMS MUST BE INCLUDED IN ALL FEDERAL AID CONTRACTS AND MUST BE INCLUDED IN EACH BID PROPOSAL.

CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY, AND VOLUNTARY EXCLUSION (FHWA Section 1273 X)

A. The prospective bidder certifies to the best of its knowledge and belief that they and their Principals:

1. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency;

2. Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for a commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property;

3. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with the commission of any of the offenses enumerated in paragraph (A)(2) of this certification; and

4. Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.

B. Where the Bidder is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING (FHWA 1273 Section XI)

A. The prospective bidder certifies, by signing and submitting this bid or proposal, to the best of his/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 the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

2. If any funds other than federally appropriated 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.

B. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 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.

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

THESE MUST BE INCLUDED IN ALL FEDERAL AID CONTRACTS AND MUST BE INCLUDED IN EACH BID PROPOSAL.

Appendix 12-1.1

FALSE CLAIMS CERTIFICATION (31 USC §3729, NYS Finance Law Article 13)

Under the Federal False Claims Act, 31 U.S. Code §3729, any person or entity who knowingly presents, or causes to be presented to the Federal Government, a false or fraudulent claim for payment or approval is liable to the United States Government for a civil penalty of not less than \$5,000 and not more than \$10,000, plus three times the amount of damages the Government sustains.

Under the New York State False Claims Act, NYS Finance Law Article 13, any person or entity who knowingly presents or causes to be presented to the State of New York or Local Governments within the State of New York, a false or fraudulent claim for payment or approval is liable to the Government for a civil penalty of not less than \$6,000 and not more than \$12,000, plus three times the amount of damages the Government sustains.

“Knowingly” is defined as (1) actual knowledge; (2) acting in deliberate ignorance of the truth or falsity of information; or (3) acting in reckless disregard of the truth or falsity of information. No proof of specific intent to defraud is required.

The Contractor to whom the above-identified contract is to be awarded does hereby certify to the New York State Department of Transportation that it understands the prohibitions under the Federal and New York State False Claims acts and that it has not and will not submit or cause to be submitted any fraudulent claims in the submission of this bid or in connection with the above-identified contract. The Contractor further certifies that it understands retaliatory actions against employees and officers who initiate a *qui tam* (public) action on behalf of the government or cooperate in the investigation of a false claim are prohibited and are subject to an assessment of damages and penalties under the provisions of the Federal and New York State False Claims Acts.

THIS MUST BE INCLUDED IN ALL FEDERAL AID CONTRACTS AND MUST BE INCLUDED IN EACH BID PROPOSAL.

Appendix 12-1.2

**NON-COLLUSIVE BIDDING CERTIFICATION
(NYS Finance Law §139-d and General Municipal Law §103-d)**

1. By submission of this bid:

(a) Each bidder and each person signing on behalf of any bidder certifies, and in the case of a joint bid, each party thereto certifies as to its own organization, under penalty of perjury, that to the best of its knowledge and belief:

- (1) The prices in this bid have been arrived at independently without collusion, consultation, communication, or agreement, for the purpose 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.

(b) A bid shall not be considered for award, nor shall any award be made where (a)(1)(2) and (3) above have not been complied with; provided, however, that if in any case, the bidder cannot make the foregoing certification, the bidder shall so state and shall furnish with the bid a signed statement which sets forth in detail the reasons, therefore. Where (a)(1)(2) and (3) above have not been complied with, the bid shall not be considered for award, nor shall any award be made unless the head of the purchasing unit of the state, public department, or agency to which the bid is made, or his designee, determines that such disclosure was not made for the purpose of restricting competition.

The fact that the bidder (a) has published price lists, rates, or tariffs covering items being procured, (b) has informed prospective customers of proposed or pending publication of new or revised pricelists for such items, or (c) has sold the same items to other customers at the same prices being bid, does not constitute, without more, a disclosure within the meaning of subparagraph one (a).

2. Any bid hereafter made to the state or any public department, agency, or official thereof by a corporate bidder for work or services performed or to be performed or goods sold or to be sold, where competitive bidding is required by statute, rule, or regulation, and where such bid contains the certification referred to in subdivision one of this section, shall be deemed to have been authorized by the board of directors of the bidder and such authorization shall be deemed to have included the signing and submission of the bid and the inclusion therein of the certificate as to non-collusion as the act and deed of the corporation."

**STATE NON-COLLUSIVE BIDDING CERTIFICATIONS MUST BE INCLUDED IN EVERY BID
PROPOSAL REGARDLESS OF WHETHER NYSDOT SPECIFICATIONS OR LOCAL
SPECIFICATIONS ARE USED.**

Appendix 12-1.3

NON-COLLUSIVE BIDDING CERTIFICATION (2 CFR 1200)

"By submission of this bid, the Bidder does hereby tender to the Owner this sworn statement pursuant to Section 1128 of Title 23, U. S. Code-Highways and does hereby certify, in conformance with said Section 112 of Title 23, U. S. Code-Highways that the said Contractor has not, either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with the above contract."

The signatory to the proposal, being duly sworn, certifies that, EXCEPT AS NOTED BELOW, his/her company and any person associated therewith in the capacity of owner, partner, director, officer, or major stockholder (of 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: The Contractor should list any relevant information, attaching additional sheets to the proposal if necessary. (Exceptions will not necessarily result in disapproval but will be considered in determining responsibility. For any exception noted, the Contractor should indicate to whom it applies, the initiating agency, and the dates of actions. Providing false information may result in criminal prosecution or administrative sanctions).

FEDERAL NON-COLLUSIVE BIDDING CERTIFICATION MUST BE INCLUDED IN EVERY BID PROPOSAL REGARDLESS OF WHETHER NYSDOT SPECIFICATIONS OR LOCAL SPECIFICATIONS ARE USED.

Appendix 12-1.4

**REPORTING VIOLATIONS OF NON-COLLUSIVE BIDDING PROCEDURES,
MISCONDUCT OR OTHER PROHIBITED CONTRACT ACTIVITIES**

**US DEPARTMENT OF TRANSPORTATION
OFFICE OF INSPECTOR GENERAL - FRAUD, WASTE & ABUSE HOTLINE**

The U.S. Department of Transportation (USDOT) Office of Inspector General (OIG) maintains a Hotline for receiving allegations of fraud, waste, abuse, or mismanagement in USDOT programs or operations. Persons with knowledge of bid collusion (i.e., contractors, suppliers, work persons, etc.), or other questionable contract-related practices (inadequate materials, poor workmanship, theft of materials, etc.), are encouraged to report such activities by calling the Hotline at 1-800-424-9071, emailing hotline@oig.dot.gov, or writing to the USDOT Inspector General, 1200 New Jersey Ave SE, West Bldg. 7th Floor, Washington, DC 20590. Allegations may be reported 24 hours a day, seven days a week by DOT employees, contractors, or the general public.

NEW YORK STATE OFFICE OF THE INSPECTOR GENERAL HOTLINE

The New York State Office of the Inspector General maintains a Hotline for receiving allegations of governmental misconduct. Reports of New York State governmental misconduct may be made in strict confidence to the Toll-Free 24-hour Statewide HOTLINE at 1-800-DO RIGHT (1-800-367-4448), the online complaint form at www.ig.ny.gov or in writing to the New York State Office of the Inspector General, Empire State Plaza, Agency Building 2 - 16th Floor, Albany, New York 12223.

**THIS PAGE MUST BE INCLUDED IN ALL FEDERAL AID CONTRACTS AND MUST BE INCLUDED
IN EACH BID PROPOSAL.**

Appendix 12-1.5

GOALS FOR EQUAL EMPLOYMENT OPPORTUNITY (EEO) PARTICIPATION

The Contractor shall follow the requirements of NYSDOT Standard Specification §102-11 *Equal Employment Opportunity Requirements*. The goals for minority and female participation, expressed in percentage terms for the Contractor’s aggregate workforce in each trade on all construction work in the covered area, which is the county or counties in which the work is located, are as follows:

GOALS FOR PARTICIPATION OF MINORITIES					
COUNTY	%	COUNTY	%	COUNTY	%
Albany	3.2	Herkimer	2.1	Richmond	Table
Allegany	6.3	Jefferson	2.5	Rockland	22.6
Broome	1.1	Kings	Table	St. Lawrence	2.5
Bronx	Table	Lewis	2.5	Saratoga	3.2
Cattaraugus	6.3	Livingston	5.3	Schenectady	3.2
Cayuga	2.5	Madison	3.8	Schoharie	2.6
Chautauqua	6.3	Monroe	5.3	Schuyler	1.2
Chemung	2.2	Montgomery	3.2	Seneca	5.9
Chenango	1.2	Nassau	5.8	Steuben	1.2
Clinton	2.6	New York	Table	Suffolk	5.8
Columbia	2.6	Niagara	7.7	Sullivan	17.0
Cortland	2.5	Oneida	2.1	Tioga	1.1
Delaware	1.2	Onondaga	3.8	Tompkins	1.2
Dutchess	6.4	Ontario	5.3	Ulster	17.0
Erie	7.7	Orange	17.0	Warren	2.6
Essex	2.6	Orleans	5.3	Washington	2.6
Franklin	2.5	Oswego	3.8	Wayne	5.3
Fulton	2.6	Otsego	1.2	Westchester	22.6
Genesee	5.9	Putnam	22.6	Wyoming	6.3
Greene	2.6	Queens	Table	Yates	5.9
Hamilton	2.6	Rensselaer	3.2		

(45 FR 65976 – 10/3/1980)

GOALS FOR PARTICIPATION OF MINORITIES BRONX, KINGS, NEW YORK, QUEENS, AND RICHMOND COUNTIES			
Electricians	9.0 to 10.2	Bricklayers	13.4 to 15.5
Carpenters	27.6 to 32.0	Asbestos workers	22.8 to 28.0
Steam fitters	12.2 to 13.5	Roofers	6.3 to 7.5
Metal lathers	24.6 to 25.6	Iron workers (ornamental)	22.4 to 23.0
Painters	26.0 to 28.6	Cement masons	23.0 to 27.0
Operating engineers	25.6 to 26.0	Glaziers	16.0 to 20.0
Plumbers	12.0 to 14.5	Plasterers	15.8 to 18.0
Iron workers (structural)	25.9 to 32.0	Teamsters	22.0 to 22.5
Elevator constructors	5.5 to 6.5	Boilermakers	13.0 to 15.5
		All others	16.4 to 17.5

(43 FR 14888 – 4/7/1978)

GOAL FOR PARTICIPATION OF WOMEN

The goal for the participation of women is 6.9%.

These goals are applicable to all the Contractor's construction work (whether or not it is Federal or federally assisted). If the Contractor performs construction work outside of New York State, it shall apply the goals established for the covered area where the work is actually performed.

**REQUIRED CONTRACT PROVISIONS
FEDERAL-AID CONSTRUCTION CONTRACTS**

- I. General
- II. Nondiscrimination
- III. Non-segregated Facilities
- IV. Davis-Bacon and Related Act Provisions
- V. Contract Work Hours and Safety Standards Act Provisions
- VI. Subletting or Assigning the Contract
- VII. Safety: Accident Prevention
- VIII. False Statements Concerning Highway Projects
- IX. Implementation of Clean Air Act and Federal Water Pollution Control Act
- X. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion
- XI. Certification Regarding Use of Contract Funds for Lobbying
- XII. Use of United States-Flag Vessels:

Form FHWA-1273 must be included in all Federal-aid design-build contracts, in all subcontracts and in lower tier subcontracts (excluding subcontracts for design services, purchase orders, rental agreements and other agreements for supplies or services) in accordance with 23 CFR 633.102. The design-builder shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.

Contracting agencies may reference Form FHWA-1273 in solicitation-for-bids or request-for-proposals documents, however, the Form FHWA-1273 must be physically incorporated (not referenced) in all contracts, subcontracts and lower-tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services related to a construction contract). 23 CFR 633.102(b).

ATTACHMENTS

A. Employment and Materials Preference for Appalachian Development Highway System or Appalachian Local Access Road Contracts (included in Appalachian contracts only)

2. Subject to the applicability criteria noted in the following sections, these contract provisions shall apply to all work performed on the contract by the contractor's own organization and with the assistance of workers under the contractor's immediate superintendence and to all work performed on the contract by piecework, station work, or by subcontract. 23 CFR 633.102(d).

I. GENERAL

1. Form FHWA-1273 must be physically incorporated in each construction contract funded under title 23, United States Code, as required in 23 CFR 633.102(b) (excluding emergency contracts solely intended for debris removal). The contractor (or subcontractor) must insert this form in each subcontract and further require its inclusion in all lower tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services). 23 CFR 633.102(e). The applicable requirements of Form FHWA-1273 are incorporated by reference for work done under any purchase order, rental agreement or agreement for other services. The prime contractor shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider. 23 CFR 633.102(e).

3. A breach of any of the stipulations contained in these Required Contract Provisions may be sufficient grounds for withholding of progress payments, withholding of final payment, termination of the contract, suspension / debarment or any other action determined to be appropriate by the contracting agency and FHWA.

4. Selection of Labor: During the performance of this contract, the contractor shall not use convict labor for any purpose within the limits of a construction project on a Federal-aid highway unless it is labor performed by convicts who are on parole, supervised release, or probation. 23 U.S.C. 114(b). The term Federal-aid highway does not include roadways functionally

classified as local roads or rural minor collectors. 23 U.S.C. 101(a).

II. NONDISCRIMINATION (23 CFR 230.107(a); 23 CFR Part 230, Subpart A, Appendix A; EO 11246)

The provisions of this section related to 23 CFR Part 230, Subpart A, Appendix A are applicable to all Federal-aid construction contracts and to all related construction subcontracts of \$10,000 or more. The provisions of 23 CFR Part 230 are not applicable to material supply, engineering, or architectural service contracts.

In addition, the contractor and all subcontractors must comply with the following policies: Executive Order 11246, 41 CFR Part 60, 29 CFR Parts 1625-1627, 23 U.S.C. 140, Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000d et seq.), and related regulations including 49 CFR Parts 21, 26, and 27; and 23 CFR Parts 200, 230, and 633.

The contractor and all subcontractors must comply with: the requirements of the Equal Opportunity Clause in 41 CFR 60-1.4(b) and, for all construction contracts exceeding \$10,000, the Standard Federal Equal Employment Opportunity Construction Contract Specifications in 41 CFR 60-4.3.

Note: The U.S. Department of Labor has exclusive authority to determine compliance with Executive Order 11246 and the policies of the Secretary of Labor including 41 CFR Part 60, and 29 CFR Parts 1625-1627. The contracting agency and the FHWA have the authority and the responsibility to ensure compliance with 23 U.S.C. 140, Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), and Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000d et seq.), and related regulations including 49 CFR Parts 21, 26, and 27; and 23 CFR Parts 200, 230, and 633.

The following provision is adopted from 23 CFR Part 230, Subpart A, Appendix A, with appropriate revisions to conform to the U.S.

Department of Labor (US DOL) and FHWA requirements.

1. Equal Employment Opportunity: Equal Employment Opportunity (EEO) requirements not to discriminate and to take affirmative action to assure equal opportunity as set forth under laws, executive orders, rules, regulations (see 28 CFR Part 35, 29 CFR Part 1630, 29 CFR Parts 1625-1627, 41 CFR Part 60 and 49 CFR Part 27) and orders of the Secretary of Labor as modified by the provisions prescribed herein, and imposed pursuant to 23 U.S.C. 140, shall constitute the EEO and specific affirmative action standards for the contractor's project activities under this contract. The provisions of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) set forth under 28 CFR Part 35 and 29 CFR Part 1630 are incorporated by reference in this contract. In the execution of this contract, the contractor agrees to comply with the following minimum specific requirement activities of EEO:

- a. The contractor will work with the contracting agency and the Federal Government to ensure that it has made every good faith effort to provide equal opportunity with respect to all of its terms and conditions of employment and in their review of activities under the contract. 23 CFR 230.409 (g)(4) & (5).
- b. The contractor will accept as its operating policy the following statement:

"It is the policy of this Company to assure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, sex, sexual orientation, gender identity, color, national origin, age or disability. Such action shall include: 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, pre-apprenticeship, and/or on-the-job training."

2. EEO Officer: The contractor will designate and make known to the contracting officers an EEO Officer who will have the responsibility for and must be capable of effectively administering and promoting an active EEO

program and who must be assigned adequate authority and responsibility to do so.

3. Dissemination of Policy: All members of the contractor's staff who are authorized to hire, supervise, promote, and discharge employees, or who recommend such action or are substantially involved in such action, will be made fully cognizant of and will implement the contractor's EEO policy and contractual responsibilities to provide EEO in each grade and classification of employment. To ensure that the above agreement will be met, the following actions will be taken as a minimum:

- a. Periodic meetings of supervisory and personnel office employees will be conducted before the start of work and then not less often than once every six months, at which time the contractor's EEO policy and its implementation will be reviewed and explained. The meetings will be conducted by the EEO Officer or other knowledgeable company official.
- b. All new supervisory or personnel office employees will be given a thorough indoctrination by the EEO Officer, covering all major aspects of the contractor's EEO obligations within thirty days following their reporting for duty with the contractor.
- c. All personnel who are engaged in direct recruitment for the project will be instructed by the EEO Officer in the contractor's procedures for locating and hiring minorities and women.
- d. Notices and posters setting forth the contractor's EEO policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.
- e. The contractor's EEO 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.

4. Recruitment: When advertising for employees, the contractor will include in all advertisements for employees the notation: "An Equal Opportunity Employer." All such advertisements will be placed in publications having a large circulation among minorities and

women in the area from which the project work force would normally be derived.

a. The contractor will, unless precluded by a valid bargaining agreement, conduct systematic and direct recruitment through public and private employee referral sources likely to yield qualified minorities and women. To meet this requirement, the contractor will identify sources of potential minority group employees and establish with such identified sources procedures whereby minority and women applicants may be referred to the contractor for employment consideration.

b. In the event the contractor has a valid bargaining agreement providing for exclusive hiring hall referrals, the contractor is expected to observe the provisions of that agreement to the extent that the system meets the contractor's compliance with EEO contract provisions. Where implementation of such an agreement has the effect of discriminating against minorities or women, or obligates the contractor to do the same, such implementation violates Federal nondiscrimination provisions.

c. The contractor will encourage its present employees to refer minorities and women as applicants for employment. Information and procedures with regard to referring such applicants will be discussed with employees.

5. 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, sexual orientation, gender identity, national origin, age or disability. The following procedures shall be followed:

- a. The contractor will conduct periodic inspections of project sites to ensure that working conditions and employee facilities do not indicate discriminatory treatment of project site personnel.
- b. The contractor will periodically evaluate the spread of wages paid within each classification

Appendix 12-1.3

to determine any evidence of discriminatory wage practices.

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

d. The contractor will promptly investigate all complaints of alleged discrimination made to the contractor in connection with its obligations under this contract, will attempt to resolve such complaints, and will take appropriate corrective action within a reasonable time. 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 contractor will inform every complainant of all of their avenues of appeal.

6. Training and Promotion:

a. The contractor will assist in locating, qualifying, and increasing the skills of minorities and women who are applicants for employment or current employees. Such efforts should be aimed at developing full journey level status employees in the type of trade or job classification involved.

b. Consistent with the contractor's work force requirements and as permissible under Federal and State regulations, the contractor 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 a special provision for training is provided under this contract, this subparagraph will be superseded as indicated in the special provision. The contracting agency may reserve training positions for persons who receive welfare assistance in accordance with 23 U.S.C. 140(a).

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

d. The contractor will periodically review the training and promotion potential of employees who are minorities and women and will encourage eligible employees to apply for such training and promotion.

7. Unions: If the contractor relies in whole or in part upon unions as a source of employees, the contractor will use good faith efforts to obtain the cooperation of such unions to increase opportunities for minorities and women. 23 CFR 230.409. Actions by the contractor, either directly or through a contractor's association acting as agent, will include the procedures set forth below:

a. The contractor will use good faith efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minorities and women for membership in the unions and increasing the skills of minorities and women so that they may qualify for higher paying employment.

b. The contractor will use good faith efforts to incorporate an EEO 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, sexual orientation, gender identity, national origin, age, or disability.

c. The contractor 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 contractor, the contractor shall so certify to the contracting agency and shall set forth what efforts have been made to obtain such information.

d. In the event the union is unable to provide the contractor with a reasonable flow of referrals within the time limit set forth in the collective bargaining agreement, the contractor will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, age, or disability; making full efforts to obtain qualified and/or qualifiable minorities and women. The failure of a union to provide sufficient referrals

(even though it is obligated to provide exclusive referrals under the terms of a collective bargaining agreement) does not relieve the contractor from the requirements of this paragraph. In the event the union referral practice prevents the contractor from meeting the obligations pursuant to Executive Order 11246, as amended, and these special provisions, such contractor shall immediately notify the contracting agency.

8. Reasonable Accommodation for Applicants / Employees with Disabilities:

The contractor must be familiar with the requirements for and comply with the Americans with Disabilities Act and all rules and regulations established thereunder. Employers must provide reasonable accommodation in all employment activities unless to do so would cause an undue hardship.

9. Selection of Subcontractors, Procurement of Materials and Leasing of Equipment:

The contractor shall not discriminate on the grounds of race, color, religion, sex, sexual orientation, gender identity, national origin, age, or disability in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The contractor shall take all necessary and reasonable steps to ensure nondiscrimination in the administration of this contract.

- a. The contractor shall notify all potential subcontractors, suppliers, and lessors of their EEO obligations under this contract.
- b. The contractor will use good faith efforts to ensure subcontractor compliance with their EEO obligations.

10. Assurances Required:

DOT's FHWA-approved Disadvantaged Business Enterprise (DBE) program are incorporated by reference.

b. The contractor, subrecipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this

contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate, which may include, but is not limited to:

- (1) Withholding monthly progress payments;
- (2) Assessing sanctions;
- (3) Liquidated damages; and/or
- (4) Disqualifying the contractor from future bidding as non-responsible.

c. The Title VI and nondiscrimination provisions of U.S. DOT Order 1050.2A at Appendixes A and E are incorporated by reference. 49 CFR Part 21.

11. Records and Reports: The contractor shall keep such records as necessary to document compliance with the EEO requirements. Such records shall be retained for a period of three years following the date of the final payment to the contractor for all contract work and shall be available at reasonable times and places for inspection by authorized representatives of the contracting agency and the FHWA.

a. The records kept by the contractor shall document the following:

- (1) The number and work hours of minority and non-minority group members and women employed in each work classification on the project;
- (2) The progress and efforts being made in cooperation with unions, when applicable, to increase employment opportunities for minorities and women; and
- (3) The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minorities and women.

b. The contractors and subcontractors will submit an annual report to the contracting agency each July for the duration of the project indicating the number of minority, women, and non-minority group employees currently engaged in each work classification required by the contract work. This information is to be reported on [Form FHWA-1391](#). The staffing data should represent the project work force on board in all or any part of the last payroll period preceding the end of July. If on-the-job training is being required by special provision, the

contractor will be required to collect and report training data. The employment data should reflect the work force on board during all or any part of the last payroll period preceding the end of July.

III. NONSEGREGATED FACILITIES

This provision is applicable to all Federal-aid construction contracts and to all related construction subcontracts of more than \$10,000. 41 CFR 60-1.5.

As prescribed by 41 CFR 60-1.8, the contractor must ensure that facilities provided for employees are provided in such a manner that segregation on the basis of race, color, religion, sex, sexual orientation, gender identity, or national origin cannot result. The contractor may neither require such segregated use by written or oral policies nor tolerate such use by employee custom. The contractor's obligation extends further to ensure that its employees are not assigned to perform their services at any location under the contractor's control where the facilities are segregated. The term "facilities" includes waiting rooms, work areas, restaurants and other eating areas, time clocks, restrooms, washrooms, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing provided for employees. The contractor shall provide separate or single-user restrooms and necessary dressing or sleeping areas to assure privacy between sexes.

IV. DAVIS-BACON AND RELATED ACT PROVISIONS

This section is applicable to all Federal-aid construction projects exceeding \$2,000 and to all related subcontracts and lower-tier subcontracts (regardless of subcontract size), in accordance with 29 CFR 5.5. The requirements apply to all projects located within the right-of-way of a roadway that is functionally classified as Federal-aid highway. 23 U.S.C. 113. This excludes roadways functionally classified as local roads or rural minor collectors, which are exempt. 23 U.S.C. 101. Where applicable law requires that projects be treated as a project on

a Federal-aid highway, the provisions of this subpart will apply regardless of the location of the project. Examples include: Surface Transportation Block Grant Program projects funded under 23 U.S.C. 133 [excluding recreational trails projects], the Nationally Significant Freight and Highway Projects funded under 23 U.S.C. 117, and National Highway Freight Program projects funded under 23 U.S.C. 167.

The following provisions are from the U.S. Department of Labor regulations in 29 CFR 5.5 "Contract provisions and related matters" with minor revisions to conform to the FHWA-1273 format and FHWA program requirements.

1. Minimum wages (29 CFR 5.5)

a. *Wage rates and fringe benefits.* All laborers and mechanics employed or working upon the site of the work (or otherwise working in construction or development of the project under a development statute), 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 basic hourly 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. As provided in paragraphs (d) and (e) of 29 CFR 5.5, the appropriate wage determinations are effective by operation of law even if they have not been attached to the contract. Contributions made or costs reasonably anticipated for bona fide fringe benefits under the Davis-Bacon Act ([40 U.S.C. 3141\(2\)\(B\)](#)) on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph 1.e. 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 must be paid the appropriate wage rate and fringe benefits on the wage determination for the classification(s) of work actually performed, without regard to skill, except as provided in paragraph 4. of this section. 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.c. of this section) and the Davis-Bacon poster (WH-1321) must 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.

b. *Frequently recurring classifications.* (1) In addition to wage and fringe benefit rates that have been determined to be prevailing under the procedures set forth in [29 CFR part 1](#), a wage determination may contain, pursuant to § 1.3(f), wage and fringe benefit rates for classifications of laborers and mechanics for which conformance requests are regularly submitted pursuant to paragraph 1.c. of this section, provided that:

- (i) The work performed by the classification is not performed by a classification in the wage determination for which a prevailing wage rate has been determined;
- (ii) The classification is used in the area by the construction industry; and
- (iii) The wage rate for the classification bears a reasonable relationship to the prevailing wage rates contained in the wage determination.

(2) The Administrator will establish wage rates for such classifications in accordance with paragraph 1.c.(1)(iii) of this section. Work performed in such a classification must be paid at no less than the wage and fringe benefit rate listed on the wage determination for such classification.

c. *Conformance.* (1) The contracting officer must 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 be classified in conformance with the wage determination. Conformance of an additional classification and wage rate and fringe benefits is appropriate only when the following criteria have been met:

- (i) The work to be performed by the classification requested is not performed by a classification in the wage determination; and
- (ii) The classification is used in the area by the construction industry; and
- (iii) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(2) The conformance process may not be used to split, subdivide, or otherwise avoid application of classifications listed in the wage determination.

(3) 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 will be sent by the contracting officer by email to DBAconformance@dol.gov. 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.

(4) 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 will, by email to DBAconformance@dol.gov, 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

Appendix 12-1.7

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.

(5) The contracting officer must promptly notify the contractor of the action taken by the Wage and Hour Division under paragraphs 1.c.(3) and (4) of this section. The contractor must furnish a written copy of such determination to each affected worker or it must be posted as a part of the wage determination. The wage rate (including fringe benefits where appropriate) determined pursuant to paragraph 1.c.(3) or (4) of this section must 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.

d. *Fringe benefits not expressed as an hourly rate.* 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 may either pay the benefit as stated in the wage determination or may pay another bona fide fringe benefit or an hourly cash equivalent thereof.

e. *Unfunded plans.* 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, in accordance with the criteria set forth in § 5.28, 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.

f. *Interest.* In the event of a failure to pay all or part of the wages required by the contract, the contractor will be required to pay interest on any underpayment of wages.

2. Withholding (29 CFR 5.5)

a. *Withholding requirements.* The contracting agency may, upon its own action, or must, upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor so much of the accrued payments or advances as may be considered necessary to satisfy the liabilities of the prime contractor or any subcontractor for the full amount of wages and monetary relief, including interest, required by the clauses set forth in this section for violations of this contract, or to satisfy any such liabilities required by any other Federal contract, or federally assisted contract subject to Davis-Bacon labor standards, that is held by the same prime contractor (as defined in § 5.2). The necessary funds may be withheld from the contractor under this contract, any other Federal contract with the same prime contractor, or any other federally assisted contract that is subject to Davis-Bacon labor standards requirements and is held by the same prime contractor, regardless of whether the other contract was awarded or assisted by the same agency, and such funds may be used to satisfy the contractor liability for which the funds were withheld. In the event of a contractor's failure to pay any laborer or mechanic, including any apprentice or helper working on the site of the work all or part of the wages required by the contract, or upon the contractor's failure to submit the required records as discussed in paragraph 3.d. of this section, the contracting agency may on its own initiative and after written notice to the contractor, 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.

b. *Priority to withheld funds.* The Department has priority to funds withheld or to be withheld in accordance with paragraph

2.a. of this section or Section V, paragraph 3.a., or both, over claims to those funds by:

(1) A contractor's surety(ies), including without limitation performance bond sureties and payment bond sureties;

(2) A contracting agency for its reprocurement costs;

(3) A trustee(s) (either a court-appointed trustee or a U.S. trustee, or both) in bankruptcy of a contractor, or a contractor's bankruptcy estate;

(4) A contractor's assignee(s);

(5) A contractor's successor(s); or

(6) A claim asserted under the Prompt Payment Act, [31 U.S.C. 3901–3907](#).

3. Records and certified payrolls (29 CFR 5.5)

a. Basic record requirements (1) Length of record retention. All regular payrolls and other basic records must be maintained by the contractor and any subcontractor during the course of the work and preserved for all laborers and mechanics working at the site of the work (or otherwise working in construction or development of the project under a development statute) for a period of at least 3 years after all the work on the prime contract is completed.

(2) Information required. Such records must contain the name; Social Security number; last known address, telephone number, and email address of each such worker; each worker's correct classification(s) of work actually performed; 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 [40 U.S.C. 3141\(2\)\(B\)](#) of the Davis-Bacon Act); daily and weekly number of hours actually worked in total and on each covered contract; deductions made; and actual wages paid.

(3) Additional records relating to fringe benefits. Whenever the Secretary of Labor has found under paragraph 1.e. of this section 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 [40 U.S.C. 3141\(2\)\(B\)](#) of the Davis-Bacon Act, the contractor must 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.

(4) Additional records relating to apprenticeship. Contractors with apprentices working under approved programs must maintain written evidence of the registration of apprenticeship programs, the registration of the apprentices, and the ratios and wage rates prescribed in the applicable programs.

b. Certified payroll requirements (1) Frequency and method of submission. The contractor or subcontractor must submit weekly, for each week in which any DBA- or Related Acts-covered work is performed, certified payrolls to the contracting agency. The prime contractor is responsible for the submission of all certified payrolls by all subcontractors. A contracting agency or prime contractor may permit or require contractors to submit certified payrolls through an electronic system, as long as the electronic system requires a legally valid electronic signature; the system allows the contractor, the contracting agency, and the Department of Labor to access the certified payrolls upon request for at least 3 years after the work on the prime contract has been completed; and the contracting agency or prime contractor permits other methods of submission in situations where the contractor is unable or limited in its ability to use or access the electronic system.

(2) Information required. The certified payrolls submitted must set out accurately and completely all of the information required to be maintained under paragraph 3.a.(2) of this section, except that full Social Security numbers and last known addresses, telephone numbers, and email addresses must not be included on weekly transmittals. Instead, the certified payrolls need only include an individually identifying number for each worker (e.g., the last four digits of the worker's Social Security number). The required weekly certified payroll information may be submitted using Optional Form WH–347 or in any other format desired. Optional Form WH–347 is available for this purpose from the Wage and Hour Division website at

<https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/wh3471.pdf> or its successor website. It is not a violation of this section for a prime contractor to require a subcontractor to provide full Social Security numbers and last known addresses, telephone numbers, and email addresses to the prime contractor for its own records, without weekly submission by the subcontractor to the contracting agency.

(3) *Statement of Compliance.* Each certified payroll submitted must be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor, or the contractor's or subcontractor's agent who pays or supervises the payment of the persons working on the contract, and must certify the following:

(i) That the certified payroll for the payroll period contains the information required to be provided under paragraph 3.b. of this section, the appropriate information and basic records are being maintained under paragraph 3.a. of this section, and such information and records are correct and complete;

(ii) That each laborer or mechanic (including each helper and apprentice) working 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 [29 CFR part 3](#); and

(iii) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification(s) of work actually performed, as specified in the applicable wage determination incorporated into the contract.

(4) *Use of Optional Form WH-347.* The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 will satisfy the requirement for submission of the "Statement of Compliance" required by paragraph 3.b.(3) of this section.

(5) *Signature.* The signature by the contractor, subcontractor, or the contractor's or subcontractor's agent must be an original

handwritten signature or a legally valid electronic signature.

(6) *Falsification.* The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under 18 U.S.C. 1001 and 31 U.S.C. 3729.

(7) *Length of certified payroll retention.* The contractor or subcontractor must preserve all certified payrolls during the course of the work and for a period of 3 years after all the work on the prime contract is completed.

c. *Contracts, subcontracts, and related documents.* The contractor or subcontractor must maintain this contract or subcontract and related documents including, without limitation, bids, proposals, amendments, modifications, and extensions. The contractor or subcontractor must preserve these contracts, subcontracts, and related documents during the course of the work and for a period of 3 years after all the work on the prime contract is completed.

d. *Required disclosures and access (1) Required record disclosures and access to workers.* The contractor or subcontractor must make the records required under paragraphs 3.a. through 3.c. of this section, and any other documents that the contracting agency, the State DOT, the FHWA, or the Department of Labor deems necessary to determine compliance with the labor standards provisions of any of the applicable statutes referenced by § 5.1, available for inspection, copying, or transcription by authorized representatives of the contracting agency, the State DOT, the FHWA, or the Department of Labor, and must permit such representatives to interview workers during working hours on the job.

(2) *Sanctions for non-compliance with records and worker access requirements.* If the contractor or subcontractor fails to submit the required records or to make them available, or refuses to permit worker interviews during working hours on the job, the Federal agency may, after written notice to the contractor, sponsor, applicant, owner, or other entity, as the case may be, that maintains such records or that employs such workers, 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, or to permit worker interviews during working hours on the job, may be grounds for debarment action pursuant to § 5.12. In addition, any contractor or other person that fails to submit the required records or make those records available to WHD within the time WHD requests that the records be produced will be precluded from introducing as evidence in an administrative proceeding under [29 CFR part 6](#) any of the required records that were not provided or made available to WHD. WHD will take into consideration a reasonable request from the contractor or person for an extension of the time for submission of records. WHD will determine the reasonableness of the request and may consider, among other things, the location of the records and the volume of production.

(3) Required information disclosures.

Contractors and subcontractors must maintain the full Social Security number and last known address, telephone number, and email address of each covered worker, and must provide them upon request to the contracting agency, the State DOT, the FHWA, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or other compliance action.

4. Apprentices and equal employment opportunity (29 CFR 5.5)

a. Apprentices (1) Rate of pay. Apprentices will be permitted to work at less than the predetermined rate for the work they perform 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, Office of Apprenticeship (OA), or with a State Apprenticeship Agency recognized by the OA. A person who is not individually registered in the program, but who has been certified by the OA or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice, will be permitted to work at less than the predetermined rate for the work they

perform in the first 90 days of probationary employment as an apprentice in such a program. In the event the OA or a State Apprenticeship Agency recognized by the OA withdraws approval of an apprenticeship program, the contractor will no longer be permitted to use apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(2) Fringe benefits. Apprentices must 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 determines that a different practice prevails for the applicable apprentice classification, fringe benefits must be paid in accordance with that determination.

(3) Apprenticeship ratio. The allowable ratio of apprentices to journeyworkers on the job site in any craft classification must not be greater than the ratio permitted to the contractor as to the entire work force under the registered program or the ratio applicable to the locality of the project pursuant to paragraph 4.a.(4) of this section. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated in paragraph 4.a.(1) of this section, must 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 this section must be paid not less than the applicable wage rate on the wage determination for the work actually performed.

(4) Reciprocity of ratios and wage rates. Where a contractor is performing construction on a project in a locality other than the locality in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyworker's hourly rate) applicable within the locality in which the construction is being performed must be observed. If there is no applicable ratio or wage rate for the locality of the project, the ratio and wage rate specified in

the contractor's registered program must be observed.

b. *Equal employment opportunity.* The use of apprentices and journeyworkers under this part must be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and [29 CFR part 30](#).

c. Apprentices and Trainees (programs of the U.S. DOT).

Apprentices and trainees working under apprenticeship and skill training programs which have been certified by the Secretary of Transportation as promoting EEO in connection with Federal-aid highway construction programs are not subject to the requirements of paragraph 4 of this Section IV. 23 CFR 230.111(e)(2). The straight time hourly wage rates for apprentices and trainees under such programs will be established by the particular programs. The ratio of apprentices and trainees to journeyworkers shall not be greater than permitted by the terms of the particular program.

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 as provided in 29 CFR 5.5.

6. Subcontracts. The contractor or subcontractor must insert FHWA-1273 in any subcontracts, along with the applicable wage determination(s) and such other clauses or contract modifications as the contracting agency may by appropriate instructions require, and a clause requiring the subcontractors to include these clauses and wage determination(s) in any lower tier subcontracts. The prime contractor is responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in this section. In the event of any violations of these clauses, the prime contractor and any subcontractor(s) responsible will be liable for any unpaid wages and monetary relief, including interest from the date of the underpayment or loss, due to any workers of

lower-tier subcontractors, and may be subject to debarment, as appropriate. 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 as provided in 29 CFR 5.5.

9. Disputes concerning labor standards. As provided in 29 CFR 5.5, 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. a. By entering into this contract, the contractor certifies that neither it nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of [40 U.S.C. 3144\(b\)](#) or § 5.12(a).

b. No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of [40 U.S.C. 3144\(b\)](#) or § 5.12(a).

c. The penalty for making false statements is prescribed in the U.S. Code, Title 18 Crimes and Criminal Procedure, [18 U.S.C. 1001](#).

11. Anti-retaliation. It is unlawful for any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, or to cause any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist,

harass, or in any other manner discriminate against, any worker or job applicant for:

a. Notifying any contractor of any conduct which the worker reasonably believes constitutes a violation of the DBA, Related Acts, this part, or [29 CFR part 1](#) or [3](#);

b. Filing any complaint, initiating or causing to be initiated any proceeding, or otherwise asserting or seeking to assert on behalf of themselves or others any right or protection under the DBA, Related Acts, this part, or [29 CFR part 1](#) or [3](#);

c. Cooperating in any investigation or other compliance action, or testifying in any proceeding under the DBA, Related Acts, this part, or [29 CFR part 1](#) or [3](#); or

d. Informing any other person about their rights under the DBA, Related Acts, this part, or [29 CFR part 1](#) or [3](#).

V. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

Pursuant to 29 CFR 5.5(b), the following clauses apply to any Federal-aid construction contract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by 29 CFR 5.5(a) or 29 CFR 4.6. As used in this paragraph, the terms laborers and mechanics include watchpersons and guards.

1. Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek. 29 CFR 5.5.

2. Violation; liability for unpaid wages; liquidated damages. In the event of any

violation of the clause set forth in paragraph 1. of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages and interest from the date of the underpayment. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchpersons and guards, employed in violation of the clause set forth in paragraph 1. of this section, in the sum currently provided in 29 CFR 5.5(b)(2)* for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph 1. of this section. * \$31 as of January 15, 2023 (See 88 FR 88 FR 2210) as may be adjusted annually by the Department of Labor, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990.

3. Withholding for unpaid wages and liquidated damages

a. *Withholding process.* The FHWA or the contracting agency may, upon its own action, or must, upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor so much of the accrued payments or advances as may be considered necessary to satisfy the liabilities of the prime contractor or any subcontractor for any unpaid wages; monetary relief, including interest; and liquidated damages required by the clauses set forth in this section on this contract, any other Federal contract with the same prime contractor, or any other federally assisted contract subject to the Contract Work Hours and Safety Standards Act that is held by the same prime contractor (as defined in § 5.2). The necessary funds may be withheld from the contractor under this contract, any other Federal contract with the same prime contractor, or any other federally assisted contract that is subject to the Contract Work Hours and Safety Standards Act and is held by the same prime contractor, regardless of

whether the other contract was awarded or assisted by the same agency, and such funds may be used to satisfy the contractor liability for which the funds were withheld.

b. *Priority to withheld funds.* The Department has priority to funds withheld or to be withheld in accordance with Section IV paragraph 2.a. or paragraph 3.a. of this section, or both, over claims to those funds by:

(1) A contractor's surety(ies), including without limitation performance bond sureties and payment bond sureties;

(2) A contracting agency for its reprourement costs;

(3) A trustee(s) (either a court-appointed trustee or a U.S. trustee, or both) in bankruptcy of a contractor, or a contractor's bankruptcy estate;

(4) A contractor's assignee(s);

(5) A contractor's successor(s); or

(6) A claim asserted under the Prompt Payment Act, [31 U.S.C. 3901–3907](#).

4. Subcontracts. The contractor or subcontractor must insert in any subcontracts the clauses set forth in paragraphs 1. through 5. of this section and a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor is responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs 1. through 5. In the event of any violations of these clauses, the prime contractor and any subcontractor(s) responsible will be liable for any unpaid wages and monetary relief, including interest from the date of the underpayment or loss, due to any workers of lower-tier subcontractors, and associated liquidated damages and may be subject to debarment, as appropriate.

5. Anti-retaliation. It is unlawful for any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, or to cause any person to discharge, demote, intimidate,

threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, any worker or job applicant for:

a. Notifying any contractor of any conduct which the worker reasonably believes constitutes a violation of the Contract Work Hours and Safety Standards Act (CWHSSA) or its implementing regulations in this part;

b. Filing any complaint, initiating or causing to be initiated any proceeding, or otherwise asserting or seeking to assert on behalf of themselves or others any right or protection under CWHSSA or this part;

c. Cooperating in any investigation or other compliance action, or testifying in any proceeding under CWHSSA or this part; or

d. Informing any other person about their rights under CWHSSA or this part.

VI. SUBLETTING OR ASSIGNING THE CONTRACT

This provision is applicable to all Federal-aid construction contracts on the National Highway System pursuant to 23 CFR 635.116.

1. The contractor shall perform with its own organization contract work amounting to not less than 30 percent (or a greater percentage if specified elsewhere in the contract) of the total original contract price, excluding any specialty items designated by the contracting agency. Specialty items may be performed by subcontract and the amount of any such specialty items performed may be deducted from the total original contract price before computing the amount of work required to be performed by the contractor's own organization (23 CFR 635.116).

a. The term "perform work with its own organization" in paragraph 1 of Section VI refers to workers employed or leased by the prime contractor, and equipment owned or rented by the prime contractor, with or without operators. Such term does not include employees or equipment of a subcontractor or lower tier subcontractor, agents of the prime contractor, or any other assignees. The term may include payments for the costs of hiring

leased employees from an employee leasing firm meeting all relevant Federal and State regulatory requirements. Leased employees may only be included in this term if the prime contractor meets all of the following conditions: (based on longstanding interpretation)

(1) the prime contractor maintains control over the supervision of the day-to-day activities of the leased employees;

(2) the prime contractor remains responsible for the quality of the work of the leased employees;

(3) the prime contractor retains all power to accept or exclude individual employees from work on the project; and

(4) the prime contractor remains ultimately responsible for the payment of predetermined minimum wages, the submission of payrolls, statements of compliance and all other Federal regulatory requirements.

b. "Specialty Items" shall be construed to be limited to work that requires highly specialized knowledge, abilities, or equipment not ordinarily available in the type of contracting organizations qualified and expected to bid or propose on the contract as a whole and in general are to be limited to minor components of the overall contract. 23 CFR 635.102.

2. Pursuant to 23 CFR 635.116(a), the contract amount upon which the requirements set forth in paragraph (1) of Section VI is computed includes the cost of material and manufactured products which are to be purchased or produced by the contractor under the contract provisions.

3. Pursuant to 23 CFR 635.116(c), the contractor shall furnish (a) a competent superintendent or supervisor who is employed by the firm, has full authority to direct performance of the work in accordance with the contract requirements, and is in charge of all construction operations (regardless of who performs the work) and (b) such other of its own organizational resources (supervision, management, and engineering services) as the

contracting officer determines is necessary to assure the performance of the contract.

4. No portion of the contract shall be sublet, assigned or otherwise disposed of except with the written consent of the contracting officer, or authorized representative, and such consent when given shall not be construed to relieve the contractor of any responsibility for the fulfillment of the contract. Written consent will be given only after the contracting agency has assured that each subcontract is evidenced in writing and that it contains all pertinent provisions and requirements of the prime contract. (based on long-standing interpretation of 23 CFR 635.116).

5. The 30-percent self-performance requirement of paragraph (1) is not applicable to design-build contracts; however, contracting agencies may establish their own self-performance requirements. 23 CFR 635.116(d).

VII. SAFETY: ACCIDENT PREVENTION

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

1. In the performance of this contract the contractor shall comply with all applicable Federal, State, and local laws governing safety, health, and sanitation (23 CFR Part 635). The contractor shall provide all safeguards, safety devices and protective equipment and take any other needed actions as it determines, or as the contracting officer may determine, to be reasonably necessary to protect the life and health of employees on the job and the safety of the public and to protect property in connection with the performance of the work covered by the contract. 23 CFR 635.108.

2. It is a condition of this contract, and shall be made a condition of each subcontract, which the contractor enters into pursuant to this contract, that the contractor and any subcontractor shall not permit any employee, in performance of the contract, to work in surroundings or under conditions which are unsanitary, hazardous or dangerous to his/her health or safety, as determined under construction safety and health standards (29

CFR Part 1926) promulgated by the Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3704). 29 CFR 1926.10.

3. Pursuant to 29 CFR 1926.3, it is a condition of this contract that the Secretary of Labor or authorized representative thereof, shall have right of entry to any site of contract performance to inspect or investigate the matter of compliance with the construction safety and health standards and to carry out the duties of the Secretary under Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3704).

VIII. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

In order to assure high quality and durable construction in conformity with approved plans and specifications and a high degree of reliability on statements and representations made by engineers, contractors, suppliers, and workers on Federal-aid highway projects, it is essential that all persons concerned with the project perform their functions as carefully, thoroughly, and honestly as possible. Willful falsification, distortion, or misrepresentation with respect to any facts related to the project is a violation of Federal law. To prevent any misunderstanding regarding the seriousness of these and similar acts, Form FHWA-1022 shall be posted on each Federal-aid highway project (23 CFR Part 635) in one or more places where it is readily available to all persons concerned with the project:

18 U.S.C. 1020 reads as follows:

"Whoever, being an officer, agent, or employee of the United States, or of any State or Territory, or whoever, whether a person, association, firm, or corporation, knowingly makes any false statement, false representation, or false report as to the character, quality, quantity, or cost of the material used or to be used, or the quantity or quality of the work performed or to be

performed, or the cost thereof in connection with the submission of plans, maps, specifications, contracts, or costs of construction on any highway or related project submitted for approval to the Secretary of Transportation; or

Whoever knowingly makes any false statement, false representation, false report or false claim with respect to the character, quality, quantity, or cost of any work performed or to be performed, or materials furnished or to be furnished, in connection with the construction of any highway or related project approved by the Secretary of Transportation; or Whoever knowingly makes any false statement or false representation as to material fact in any statement, certificate, or report submitted pursuant to provisions of the Federal-aid Roads Act approved July 11, 1916, (39 Stat. 355), as amended and supplemented;

Shall be fined under this title or imprisoned not more than 5 years or both."

IX. IMPLEMENTATION OF CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT (42 U.S.C. 7606; 2 CFR 200.88; EO 11738)

This provision is applicable to all Federal-aid construction contracts in excess of \$150,000 and to all related subcontracts. 48 CFR 2.101; 2 CFR 200.327.

By submission of this bid/proposal or the execution of this contract or subcontract, as appropriate, the bidder, proposer, Federal-aid construction contractor, subcontractor, supplier, or vendor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal Highway Administration and the Regional Office of the Environmental Protection Agency. 2 CFR Part 200, Appendix II.

The contractor agrees to include or cause to be included the requirements of this Section in every subcontract, and further agrees to take such action as the contracting agency may

direct as a means of enforcing such requirements. 2 CFR 200.327.

X. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION

This provision is applicable to all Federal-aid construction contracts, design-build contracts, subcontracts, lower-tier subcontracts, purchase orders, lease agreements, consultant contracts or any other covered transaction requiring FHWA approval or that is estimated to cost \$25,000 or more – as defined in 2 CFR Parts 180 and 1200. 2 CFR 180.220 and 1200.220.

1. Instructions for Certification – First Tier Participants:

a. By signing and submitting this proposal, the prospective first tier participant is providing the certification set out below.

b. The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this covered transaction. The prospective first tier participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective first tier participant to furnish a certification or an explanation shall disqualify such a person from participation in this transaction. 2 CFR 180.320.

c. The certification in this clause is a material representation of fact upon which reliance was placed when the contracting agency determined to enter into this transaction. If it is later determined that the prospective participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the contracting agency may terminate this transaction for cause of default. 2 CFR 180.325.

d. The prospective first tier participant shall provide immediate written notice to the contracting agency to whom this proposal is submitted if any time the prospective first tier

participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances. 2 CFR 180.345 and 180.350.

e. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180, Subpart I, 180.900-180.1020, and 1200. "First Tier Covered Transactions" refers to any covered transaction between a recipient or subrecipient of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a recipient or subrecipient of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

f. The prospective first tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction. 2 CFR 180.330.

g. The prospective first tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions," provided by the department or contracting agency, entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold. 2 CFR 180.220 and 180.300.

h. A participant in a covered transaction may rely upon a certification of a prospective

participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. 2 CFR 180.300; 180.320, and 180.325. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. 2 CFR 180.335. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the System for Award Management website (<https://www.sam.gov/>). 2 CFR 180.300, 180.320, and 180.325.

i. Nothing contained in the foregoing shall be construed to require the establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of the prospective participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

j. Except for transactions authorized under paragraph (f) of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default. 2 CFR 180.325.

2. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – First Tier Participants:

a. The prospective first tier participant certifies to the best of its knowledge and belief, that it and its principals:

(1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency, 2 CFR 180.335;.

(2) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property, 2 CFR 180.800;

(3) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (a)(2) of this certification, 2 CFR 180.700 and 180.800; and

(4) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default. 2 CFR 180.335(d).

(5) Are not a corporation that has been convicted of a felony violation under any Federal law within the two-year period preceding this proposal (USDOT Order 4200.6 implementing appropriations act requirements); and

(6) Are not a corporation with any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted, or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability (USDOT Order 4200.6 implementing appropriations act requirements).

b. Where the prospective participant is unable to certify to any of the statements in this certification, such prospective participant should attach an explanation to this proposal. 2 CFR 180.335 and 180.340.

3. Instructions for Certification - Lower Tier Participants:

(Applicable to all subcontracts, purchase orders, and other lower tier transactions requiring prior FHWA approval or estimated to cost \$25,000 or more - 2 CFR Parts 180 and 1200). 2 CFR 180.220 and 1200.220.

a. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

b. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department, or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

c. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous by reason of changed circumstances. 2 CFR 180.365.

d. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180, Subpart I, 180.900 – 180.1020, and 1200. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations. "First Tier Covered Transactions" refers to any covered transaction between a recipient or subrecipient of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a recipient or subrecipient of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

e. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated. 2 CFR 1200.220 and 1200.332.

f. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold. 2 CFR 180.220 and 1200.220.

g. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the System for Award Management website (<https://www.sam.gov/>), which is compiled by the General Services Administration. 2 CFR 180.300, 180.320, 180.330, and 180.335.

h. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

i. Except for transactions authorized under paragraph e of these instructions, if a participant in a covered transaction knowingly

enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment. 2 CFR 180.325.

* * * * *

4. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Participants:

a. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals:

(1) is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency, 2 CFR 180.355;

(2) is a corporation that has been convicted of a felony violation under any Federal law within the two-year period preceding this proposal (USDOT Order 4200.6 implementing appropriations act requirements); and

(3) is a corporation with any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted, or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability. (USDOT Order 4200.6 implementing appropriations act requirements)

b. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant should attach an explanation to this proposal.

* * * * *

XI. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts which exceed \$100,000. 49 CFR Part 20, App. A.

1. The prospective participant certifies, by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

a. 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 the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

b. If any funds other than Federal appropriated 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.

2. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. 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.

3. The prospective participant also agrees by submitting its bid or proposal that the participant shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000 and that

all such recipients shall certify and disclose accordingly.

directly to MARAD by the Ocean Transportation Intermediary on behalf of the contractor). 46 CFR 381.7.

XII. USE OF UNITED STATES-FLAG VESSELS:

This provision is applicable to all Federal-aid construction contracts, design-build contracts, subcontracts, lower-tier subcontracts, purchase orders, lease agreements, or any other covered transaction. 46 CFR Part 381.

This requirement applies to material or equipment that is acquired for a specific Federal-aid highway project. 46 CFR 381.7. It is not applicable to goods or materials that come into inventories independent of an FHWA funded-contract.

When oceanic shipments (or shipments across the Great Lakes) are necessary for materials or equipment acquired for a specific Federal-aid construction project, the bidder, proposer, contractor, subcontractor, or vendor agrees:

1. 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. 46 CFR 381.7.

2. 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 Office of Cargo and Commercial Sealift (MAR-620), Maritime Administration, Washington, DC 20590. (MARAD requires copies of the ocean carrier's (master) bills of lading, certified onboard, dated, with rates and charges. These bills of lading may contain business sensitive information and therefore may be submitted

Appendix 12-1.21

ATTACHMENT A - EMPLOYMENT AND MATERIALS PREFERENCE FOR APPALACHIAN DEVELOPMENT HIGHWAY SYSTEM OR APPALACHIAN LOCAL ACCESS ROAD CONTRACTS (23 CFR 633, Subpart B, Appendix B)

This provision is applicable to all Federal-aid projects funded under the Appalachian Regional Development Act of 1965.

1. During the performance of this contract, the contractor undertaking to do work which is, or reasonably may be, done as on-site work, shall give preference to qualified persons who regularly reside in the labor area as designated by the DOL wherein the contract work is situated, or the subregion, or the Appalachian counties of the State wherein the contract work is situated, except:

- a. To the extent that qualified persons regularly residing in the area are not available.
- b. For the reasonable needs of the contractor to employ supervisory or specially experienced personnel necessary to assure an efficient execution of the contract work.
- c. For the obligation of the contractor to offer employment to present or former employees as the result of a lawful collective bargaining contract, provided that the number of nonresident persons employed under this subparagraph (1c) shall not exceed 20 percent of the total number of employees employed by the contractor on the contract work, except as provided in subparagraph (4) below.

2. The contractor shall place a job order with the State Employment Service indicating (a) the classifications of the laborers, mechanics and other employees required to perform the contract work, (b) the number of employees required in each classification, (c) the date on

which the participant estimates such employees will be required, and (d) any other pertinent information required by the State Employment Service to complete the job order form. The job order may be placed with the State Employment Service in writing or by telephone. If during the course of the contract work, the information submitted by the contractor in the original job order is substantially modified, the participant shall promptly notify the State Employment Service.

3. The contractor shall give full consideration to all qualified job applicants referred to him by the State Employment Service. The contractor is not required to grant employment to any job applicants who, in his opinion, are not qualified to perform the classification of work required.

4. If, within one week following the placing of a job order by the contractor with the State Employment Service, the State Employment Service is unable to refer any qualified job applicants to the contractor, or less than the number requested, the State Employment Service will forward a certificate to the contractor indicating the unavailability of applicants. Such certificate shall be made a part of the contractor's permanent project records. Upon receipt of this certificate, the contractor may employ persons who do not normally reside in the labor area to fill positions covered by the certificate, notwithstanding the provisions of subparagraph (1c) above.

5. The provisions of 23 CFR 633.207(e) allow the contracting agency to provide a contractual preference for the use of mineral resource materials native to the Appalachian region.

6. The contractor shall include the provisions of Sections 1 through 4 of this Attachment A in every subcontract for work which is, or reasonably may be, done as on-site work.

CHAPTER 12, APPENDIX 12-2

**ADDITIONAL CONSTRUCTION
CONTRACT REQUIREMENTS**

**[FOR LOCALLY ADMINISTERED FEDERAL AID CONSTRUCTION PROJECTS
WHICH DO NOT
USE NYSDOT STANDARD SPECIFICATIONS]**

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TABLE OF CONTENTS

	Page
LABOR AND EMPLOYMENT Found in §102-10 of the NYSDOT Standard Specifications	12-2.1
EQUAL OPPORTUNITY EMPLOYMENT Found in §102-11 of the NYSDOT Standard Specifications	12-2.4
DISADVANTAGED BUSINESS ENTERPRISE (DBE) PARTICIPATION Found in §102-12 of the NYSDOT Standard Specifications.	12-2.5
CHANGED CONDITION CLAUSES Found in §104-02; §104-03; and §104-04 of the NYSDOT Standard Specifications.	12-2.15
DISPUTED WORK AND DISPUTE RESOLUTION Found in §105-14 of the NYSDOT Standard Specifications.	12-2.17
EXTRA WORK AND TIME RELATED COMPENSATION Found in §109-05 of the NYSDOT Standard Specifications	12-2.23
CIVIL RIGHTS MONITORING AND REPORTIING Found in §105-21 of the NYSDOT Standard Specifications	12-2.34
MATERIAL ACCEPTANCE RECORDS Found in §106-04 of the NYSDOT Standard Specifications	12-2.40
BUY AMERICA REQUIREMENTS Found in §106-11 of the NYSDOT Standard Specifications	12-2.41
USE OF UNITED STATES-FLAG VESSELS Found in §107-15 of the NYSDOT Standard Specifications	12-2.44

NOTE: References to actions undertaken by the following: “Commissioner, Office of the State Comptroller, Department, Regional Director, Regional Construction Engineer, Deputy Chief Engineer Construction (DCEC) or State,” unless used in the context of reference to specific state law or regulations will be performed by the project sponsor or their designee.

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LABOR AND EMPLOYMENT

The provisions of NYS Labor Law, as amended, shall be applicable. On contracts financed with Federal Aid, any provisions of NYS Labor Law that are in conflict with mandatory Federal-Aid construction contract compliance requirements, as contained in **23 CFR 635.117** are superseded. Any provisions of NYS Labor Law that are not in conflict with mandatory Federal-Aid construction contract compliance requirements, or the Davis-Bacon Act, but are more restrictive, shall apply.

The Contractor shall directly employ those members of its own organization. Employee leasing and other similar arrangements under which workers are employed by another organization are not permitted.

No procedures or requirement shall be imposed by any state which will operate to discriminate against the employment of labor from any other state, possession or territory of the United States, in the construction of a Federal-Aid project. The selection of labor to be employed by the Contractor on any Federal-Aid project shall be of its choosing.

The Contractor shall not use convict labor unless performed by convicts who are on parole, supervised release, or probation for construction, maintenance or any other purpose at the site or within the contract limits from the time of contract award until contract final acceptance by the Department.

A. Wages. The Department will identify in the contract proposal whether the NYS Department of Labor (NYSDOL) has determined the work under the contract to be prevailing wage eligible, and if so, the Department will provide the Prevailing Rate Case (PRC) number. The PRC number is found on NYSDOL Form PW-200. The Contractor shall ensure that workers are paid the appropriate wages and supplemental (fringe) benefits. If the contract is prevailing wage eligible, all on-site work shall be paid prevailing wages. When both State and Federal prevailing wages apply, the Contractor shall pay the higher of the combination of the wages and supplemental (fringe) benefits.

The Contractor shall obtain periodic wage rate schedule updates from the NYSDOL. Wage rate amendments and supplements are available on the NYSDOL web site at <https://www.labor.ny.gov/workerprotection/publicwork/PWContents.shtm>. All changes or clarification of labor classification(s) and applicability of prevailing wage rates shall be obtained in writing from the Office of the Director, NYSDOL Bureau of Public Work. The Contractor shall include the cost of changes in prevailing wages and supplemental (fringe) benefits, over the contract duration, in the contract bid prices.

B. Overtime Dispensation. All bidders, in submitting their bids, should base their bids and work progression on the assumption that Overtime Dispensation pursuant to Article 8 of the New York State Labor Law, for any workers, laborers, and mechanics to work more than 8 hours in any one calendar day or more than 5 days in any one week will not be granted for any operation for the contract duration. Regardless of approval or disapproval of overtime by the NYSDOL, no adjustment will be made in any bid prices.

Subsequent to award, where the contract proposal has imposed specific scheduling and/or phasing requirements or where it is determined by the Department to be in the best interest of the public, the Department may process, for approval by the NYSDOL, requests for overtime dispensation on certain specific operations.

The Contractor shall submit requests for overtime dispensation to the Department on Form PW-30, Application for Dispensation for Hours, which will be provided by the Engineer upon request. The Department will favorably review applications for overtime dispensation submitted by the Contractor associated with contracts subject to (A+B) Bidding, Incentive/Disincentive (I/D) or Lane Rental work, but the application should not request more than 60 hours per week.

The 60 hours per week may be either six 10-hour days or five 12-hour days. Overtime dispensations will be supported by the Department to advance Department goals and priorities, subject to specific circumstances and conditions associated with each contract.

The Department cannot guarantee that the NYSDOL will grant dispensation from restrictions pursuant to the provisions of Article 8 of the State Labor Law, however, with the Department's certification, it is anticipated that they will act favorably, provided that the Contractor is in compliance with Labor Law requirements at the time of application.

C. Payrolls. The Contractor shall provide the Engineer with weekly certified payrolls from each firm engaged in work during the preceding weekly payroll period performed by prevailing wage eligible workers.

Certified payrolls shall contain for each employee, name, race, gender, home address, an individually identifying number (e.g., the last 4 digits of the employee's social security number), work class, hours worked, wage rate, supplemental (fringe) benefits paid or provided, payroll taxes, withholdings and actual wages paid. Certified payrolls shall not include full social security numbers of employees. Certified payrolls shall be submitted on Form HC-231 for Federal-Aid contracts and Non-Federal-Aid contracts. At the Contractor's option, other payroll formats which supply the required data and certifications may be used. Each certified payroll submitted shall be accompanied by a Statement of Compliance signed by the Contractor. If the firm does not maintain a place of business in New York State and the amount of the contract exceeds \$25,000, payroll records and certifications shall be kept on the worksite.

Contractors and subcontractors shall maintain the full social security number and current address of each covered worker and shall provide them upon request to NYSDOL or USDOL for purposes of an investigation or audit of compliance with prevailing wage requirements. Contractors may require subcontractors to provide addresses and social security numbers to the Contractor for its own records, without weekly submission to the Department.

D. Training. An apprentice is defined as an individual who is enrolled in an apprenticeship training program that is registered with the NYS Department of Labor. A list of approved programs is available from the NYS Department of Labor at <https://www.labor.ny.gov/apprenticeship/appindex.shtm>.

A trainee is defined as an individual who is enrolled in an On-the-Job Training (OJT) program that is approved by the Federal Highway Administration (FHWA).

Several sources to obtain training for apprentices/trainees are available. These include:

- A NYSDOT-approved apprenticeship program sponsored by a union or a temporary project level agreement with a union which has a NYSDOL approved apprenticeship program.
- A NYSDOL-approved apprenticeship program sponsored by a contractor.
- A NYSDOL-approved apprenticeship program sponsored by a contractor signatory with an apprenticeship sponsor consortium for certain services.
- An FHWA-approved OJT program (where applicable).

Approved OJT Programs are currently limited to apprentice able occupations as determined by NYSDOL or USDOL.

Training under Training Special Provisions, if required, will be shown in the contract documents. In order to fulfill training requirements required under Training Special Provisions and/or *Equal Employment Opportunity Requirements*, training should begin as early as possible during a construction contract. The Department recommends that all bidders have an approved apprenticeship or OJT program prior to bidding.

The Contractor shall furnish the apprentice/trainee a copy of the program to be followed in providing the training. The Contractor shall provide each apprentice/trainee with a certification

showing the type and length of training satisfactorily completed.

When training is required under *Training Special Provisions* and/or *Equal Employment Opportunity Requirements*, the Contractor shall designate to the Engineer, at the preconstruction meeting, a person (or persons) from its existing workforce as the Trainer and Training Coordinator for any apprentices/ trainees.

The Trainer shall:

1. Be located on the contract site generally on a daily basis; and
2. Be responsible for the day to day supervision and training of persons on the contract; and
3. Be responsible for the preparation and submission of a monthly training progress report, after consultation with designated apprentices/trainees.

The Training Coordinator shall:

1. Be knowledgeable about the contract and the Apprenticeship/OJT programs to be used; and
2. Be responsible for ensuring on-the-job orientation of apprentices/trainees; and
3. Be responsible for ensuring meaningful and effective training for the duration of training.

PURCHASE CONTRACTS WHICH DO NOT INVOLVE INSTALLATION OR LABOR DO NOT REQUIRE WAGE RATES

Appendix 12-2.3

GOALS FOR EQUAL EMPLOYMENT OPPORTUNITY (EEO) PARTICIPATION

The Contractor shall follow *Equal Employment Opportunity Requirements*. The goals for minority and female participation, expressed in percentage terms for the Contractor’s aggregate workforce in each trade on all construction work in the covered area, which is the county or counties in which the work is located, are as follows:

GOALS FOR PARTICIPATION OF MINORITIES					
COUNTY	%	COUNTY	%	COUNTY	%
Albany	3.2	Herkimer	2.1	Richmond	Table
Allegany	6.3	Jefferson	2.5	Rockland	22.6
Broome	1.1	Kings	Table	St. Lawrence	2.5
Bronx	Table	Lewis	2.5	Saratoga	3.2
Cattaraugus	6.3	Livingston	5.3	Schenectady	3.2
Cayuga	2.5	Madison	3.8	Schoharie	2.6
Chautauqua	6.3	Monroe	5.3	Schuyler	1.2
Chemung	2.2	Montgomery	3.2	Seneca	5.9
Chenango	1.2	Nassau	5.8	Steuben	1.2
Clinton	2.6	New York	Table	Suffolk	5.8
Columbia	2.6	Niagara	7.7	Sullivan	17.0
Cortland	2.5	Oneida	2.1	Tioga	1.1
Delaware	1.2	Onondaga	3.8	Tompkins	1.2
Dutchess	6.4	Ontario	5.3	Ulster	17.0
Erie	7.7	Orange	17.0	Warren	2.6
Essex	2.6	Orleans	5.3	Washington	2.6
Franklin	2.5	Oswego	3.8	Wayne	5.3
Fulton	2.6	Otsego	1.2	Westchester	22.6
Genesee	5.9	Putnam	22.6	Wyoming	6.3
Greene	2.6	Queens	Table	Yates	5.9
Hamilton	2.6	Rensselaer	3.2		

(45 FR 65976 – 10/3/1980)

GOALS FOR PARTICIPATION OF MINORITIES BRONX, KINGS, NEW YORK, QUEENS AND RICHMOND COUNTIES			
Electricians	9.0 to 10.2	Bricklayers	13.4 to 15.5
Carpenters	27.6 to 32.0	Asbestos workers	22.8 to 28.0
Steam fitters	12.2 to 13.5	Roofers	6.3 to 7.5
Metal lathers	24.6 to 25.6	Iron workers (ornamental)	22.4 to 23.0
Painters	26.0 to 28.6	Cement masons	23.0 to 27.0
Operating engineers	25.6 to 26.0	Glaziers	16.0 to 20.0
Plumbers	12.0 to 14.5	Plasterers	15.8 to 18.0
Iron workers (structural)	25.9 to 32.0	Teamsters	22.0 to 22.5
Elevator constructors	5.5 to 6.5	Boilermakers	13.0 to 15.5
		All others	16.4 to 17.5

(43 FR 14888 – 4/7/1978)

GOAL FOR PARTICIPATION OF WOMEN

The goal for the participation of women is 6.9%.

These goals are applicable to all the Contractor's construction work (whether or not it is Federal or federally assisted). If the Contractor performs construction work outside of New York State, it shall apply the goals established for the covered area where the work is actually performed.

DISADVANTAGED BUSINESS ENTERPRISE (DBE) PARTICIPATION

The Department seeks to:

- To ensure nondiscrimination in award and administration of DOT-assisted contracts in the NYSDOT's highway, transit, and airport financial assistance programs,
- To create a level playing field on which DBEs can compete fairly for DOT-assisted contracts,
- To ensure that the Department's DBE Program is narrowly tailored in accordance with applicable law,
- To ensure that only firms that fully meet the Department's DBE Program eligibility standards are permitted to participate as DBEs,
- To help remove barriers to the participation of DBEs in USDOT-assisted contracts,
- To promote the use of DBEs in all types of federally assisted contracts and procurement activities conducted by recipients,
- To assist in the development of firms that can compete successfully in the marketplace outside the DBE program; and
- To provide appropriate flexibility to recipients of Federal financial assistance in establishing and providing opportunities for DBEs.

The parties to this contract shall take all necessary and reasonable steps in accordance with the laws, rules and regulations cited in this subsection to promote the objectives outlined above. The Contractor shall comply with the applicable laws, rules and regulations and the DBE Program Assurances stated below.

The Contractor or Subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of this contract. The Contractor shall carry out applicable requirements of 49 CFR 26 in the award and administration of Federal-Aid contracts. Failure by the Contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the Department deems appropriate, which may include, but is not limited to: (1) withholding contract payments; (2) assessing sanctions; (3) liquidated damages; and/or (4) disqualifying the Contractor from future bidding as non-responsible. The Contractor shall not use the requirements of these specifications to discriminate against any qualified company or group of companies. These requirements shall be made a part of all subcontracts and agreements entered into as a result of this contract.

A. Disadvantaged Business Enterprise (DBE) Program. The Federal statutory authority for the DBE Program is contained in the Intermodal Surface Transportation Efficiency Act of 1991 (Public Law 102-240); the Transportation Equity Act of the 21st Century (TEA-21) Public Law 105-178; the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) Public Law 109-59; the Moving Ahead for Progress in the 21st (MAP-21), (Public Law 112-141); and the Fixing America's Surface Transportation (FAST) Act (Public Law 114-94). New York State has enacted Section 85 of the Highway Law and Section 428 of the Transportation Law. Regulations have been promulgated under 49 CFR 21, 49 CFR 26 and 17 NYCRR §35.

B. DBE Goal. Federal-aid contracts have a single DBE goal. The Department will monitor the Contractor's commitments towards the DBE goal and attainments in accordance with 49 CFR 26.

Appendix 12-2.5

1. **Established Goal.** The contract participation goal for DBEs is established by geographic location and work type. The goal is stated in the proposal and remains in effect throughout the life of the contract. In executing the contract or bid documents the Bidder declares that it subscribes to the participation goal and shall meet the goal or demonstrate that it could not meet them despite its best efforts. Failure to provide commitments to meet the established goal for the contract or failure to meet the good faith efforts may be grounds for rejection of the bid as non-responsive.

2. **Zero Percent Goal.** If a zero goal for participation by DBEs is established, the Contractor shall promote the objectives of the DBE Program by providing opportunities for DBEs to participate in these areas, with such participation to be credited towards the race-neutral component of the Department's DBE Program.

C. DBE Eligibility. Only those DBE firms that are certified under the New York State Unified Certification Program are eligible under the DBE Program. Only the work, services or products provided by the DBE Firms under NAICS code(s) which the DBE is certified for, at the time the DBE enters into a contract with the Contractor, can be credited towards the contract goal. Program participants must rely on, and not depart from, the plain meaning of NAICS code descriptions in determining the scope of a firm's certification. DBE certification is not an endorsement of the quality or performance of the business but simply an acknowledgment of the firm's status as a DBE. A directory of certified firms is available on the NYS Unified Certification Program website at <https://nysucp.newnycontracts.com/>.

D. Counting DBE Participation Towards the DBE Goal. The value of the work performed by a DBE, including that of a DBE prime contractor, with its own equipment, with its own forces, and under its own supervision will be counted toward the goal, provided the participation is a commercially useful function (CUF). A DBE Prime Contractor shall continue to provide opportunities for participation by other DBEs in all types of contracts and procurement activities. Work performed by DBEs on the contract will be counted as set forth below. If the Department determines that some or all of a DBE's work does not constitute a commercially useful function in accordance with federal regulations, only the portion of the work considered to be a commercially useful function will be credited toward the goal.

The participation of a firm that is certified as an MBE cannot be counted toward a WBE goal, and the participation of a firm that is certified as a WBE cannot be counted toward an MBE goal. The participation of a firm that is certified as both an MBE and a WBE will only be counted toward one goal for each contract pay item performed by the firm in its entirety and cannot be divided between the two goals. The participation of a firm that maintains more than one certification may only be counted toward one goal (i.e., MBE, WBE, or SDVOB) for each contract pay item in the contract. A joint venture between a DBE/MBE/WBE/SDVOB and a non-DBE/MBE/WBE/SDVOB is allowed however only work performed independently by the DBE/MBE/WBE/SDVOB, not the Joint Venture, will be counted toward the DBE/MBE/WBE/SDVOB goal(s) based on the total dollar value of the clearly defined portion of the work that the DBE/MBE/WBE/SDVOB performs with its own forces. The joint venture agreement is subject to approval by the Department, a copy of which is to be furnished by the Contractor before execution of the contract. For purposes of Commercially Useful Function (CUF) review, the DBE/MBE/WBE/SDVOB must comply with the provisions of §102-12E. *Commercially Useful Function*.

The Bidder is responsible to verify the information provided by the DBE and ensure that the counting of the DBE's participation is accurate. Any shortfall caused by errors in counting are the responsibility of the Bidder.

Appendix 12-2.6

1. *Subcontractors.* A Subcontractor is any individual, firm, or corporation to whom the Contractor, with written consent of the Department, sublets any part of the contract.

100% of the value of the work performed by a DBE Subcontractor will be counted toward the DBE goal, including the cost of materials and supplies purchased by the DBE, except the cost of supplies or equipment rented or leased from the Contractor or its affiliates will not be counted.

2. *Manufacturers/Fabricators.* A Manufacturer is a firm that operates or maintains a factory or establishment that produces, on the premises, the materials, supplies, articles or equipment required under the contract and of the general character described by the specifications. A Fabricator is a firm that assembles, constructs, or otherwise substantially alters materials or supplies into assemblies, components, or finished items for inclusion into the work prior to resale.

100% of the cost of the materials or supplies from a DBE Manufacturer or Fabricator will be counted toward the DBE goal. Manufacturers or Fabricators may provide materials to the Contractor or a Subcontractor working on the contract for installation. When a DBE makes minor modifications to the materials, supplies, articles, or equipment, the DBE is not a Manufacturer. Minor modifications are additional changes to a manufactured product that are small in scope and add minimal value to the final product.

3. *Material Suppliers.* A Material Supplier, also known as a regular dealer, is a firm that owns, operates, or maintains a store, warehouse, or other establishment in which materials, supplies, articles or equipment of the general character described in the specifications required for the performance of the contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business. A Material Supplier is an established, regular business that engages in, as its principal business, and under its own name, the purchase and sale or lease of the products in question.

A DBE supplier performs a commercially useful function as a regular dealer and receives credit for 60 percent of the cost of materials or supplies (including transportation cost) when all, or at least 51 percent of, the items under a purchase order or subcontract are provided from the DBE's inventory, and when necessary, any minor quantities delivered from and by other sources are of the general character as those provided from the DBE's inventory.

Equipment rental or leasing is considered to be a type of material supply activity and is credited at 60%. Material Suppliers may provide materials to the Contractor or a Subcontractor working on the contract for installation. Credit determination awarded to a firm for the provision of materials and supplies (i.e., whether the firm is acting as a material supplier or broker) will be determined on a contract-by-contract basis. If it is determined that the material supplier is acting as a broker, the participation will be credited accordingly.

A Material Supplier who deals in bulk items such as petroleum products, steel, cement, gravel, stone, or asphalt, and items that are not typically stocked due to their unique characteristics (e.g., limited shelf life or items ordered to specification), need not own, operate nor maintain a store, warehouse, or other establishment, if it owns and operates distribution equipment for the products. This can be accomplished by either maintaining stock of the product or through delivery of the materials, to the job site or Contractor's designated location, by using the Material Supplier's own trucks. Any supplementing of Material Suppliers' own distribution equipment shall be by a long-term lease agreement and not on an ad hoc or contract-by-contract basis. To be considered valid, the long-term lease shall include the lessor's name, list of trucks to be leased by

Appendix 12-2.7

vehicle identification number (VIN), and the agreed upon amount of the cost and method of payment. Third party haulers do not qualify as a long-term lease. The operator shall be an employee of the DBE. It shall be the responsibility of the DBE to provide the operator's fuel, maintenance and insurance for all leased trucks.

4. *Distributor.* A DBE Distributor is an established business that engages in the regular sale or lease of the items specified by the contract. A DBE Distributor assumes responsibility for the items it purchases once they leave the point of origin (e.g., a Manufacturer's facility), making it liable for loss or damage not covered by the carrier's insurance.

If the materials or supplies are purchased from a DBE Distributor that neither maintains sufficient inventory nor uses its own distribution equipment for the products in question, 40% of the cost of materials or supplies (including transportation costs) will be credited.

A DBE Distributor performs a CUF when it demonstrates ownership of the items in question and assumes all risk for loss or damage during transportation, evidenced by the terms of the purchase order or a bill of lading (BOL) from a third party, indicating Free on Board (FOB) at the point of origin or similar terms that transfer responsibility of the items in question to the DBE Distributor. Where a Distributor "drop ships" materials without assuming risk or does not operate in accordance with its distributorship agreement, credit is limited to fees or commissions.

5. *Brokers/Manufacturer's Representatives.* A Broker/Manufacturer's Representative is a firm that arranges or expedites transactions for materials.

100% of the expenditures for fees or commissions charged for assistance in the procurement of, or fees for transportation charges for the delivery of, materials or supplies provided by a DBE Broker/Manufacturer's Representative will be counted toward the DBE goal, provided they are determined by the Department to be reasonable and not excessive as compared with fees customarily allowed for similar services. The cost of the materials and supplies themselves will not be counted. A Broker/Manufacturer's Representative may arrange or expedite transactions for materials to the Contractor or Subcontractor working on the contract.

6. *Services.* A Service is a firm that provides an economic benefit, such as professional, technical, consultant, or managerial service, or provides bonds or insurance specifically required for the performance of the contract.

100% of the expenditure for fees charged by a DBE Service will be counted toward the DBE goal, provided the fee is reasonable and not excessive as compared with fees customarily allowed for similar services.

7. *Trucking Firms.* A DBE trucking firm shall own and operate at least one fully licensed, insured, and operational truck used on the contract and shall be responsible for the management and supervision of the trucking operation, and the arrangement cannot be contrived solely for the purpose of meeting the DBE goal. The DBE trucking firm shall control the day-to-day DBE trucking operations and shall be responsible for: (1) negotiating and executing rental/leasing agreements; (2) controlling the work force; (3) coordinating the daily trucking needs with the Contractor or Subcontractor; and (4) scheduling and dispatching trucks.

100% of the value of the trucking operations the DBE provides on the contract using trucks it owns or leases on a long-term basis that are registered, insured, and operated by the DBE using drivers it employs, will be counted toward the DBE goal. A lease shall

Appendix 12-2.8

indicate that the DBE has exclusive use of and control over the truck. This does not preclude the leased truck from working for others during the term of the lease with the consent of the DBE, so long as the lease gives the DBE absolute priority for use of the leased truck. Leased trucks shall display the name and identification number of the DBE.

E. Commercially Useful Function. A DBE's participation will only be counted toward meeting the DBE contract goal when it performs a commercially useful function. To be considered as performing a commercially useful function, a DBE shall be responsible for the execution of a distinct element of work on a contract and carry out its responsibilities by actually performing, managing, and supervising the work involved in accordance with normal industry practice. This applies to all work performed by a DBE including Subcontractors, Manufacturers / Fabricators, Material Suppliers, Brokers / Manufacturer's Representatives, Services and Trucking Firms regardless of whether the DBE's participation is intended to count towards the goals(s). With respect to supplying materials to be used on the contract, the DBE shall assume the responsibility for negotiating price, determining quality and quantity, ordering the material, and paying for the materials.

Regardless of whether an arrangement between the Contractor and the DBE represents standard industry practice, if the arrangement erodes the ownership, control or independence of the DBE or in any other way does not meet the commercially useful function requirement, the Contractor will receive no credit toward the goal. If the reduction in credit results in the DBE participation to fall below the Contractor's commitment, the Contractor shall make every effort to find another DBE to make up the shortfall to meet their commitments, in accordance with the federal regulations.

A DBE does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction or contract through which funds are passed in order to obtain the appearance of DBE participation. The arrangement cannot be contrived solely for the purpose of meeting the DBE goal. The Contractor shall not seek credit toward the goal through any arrangements or actions of others where the Contractor knows or should have known based upon evidence and circumstances present, that a DBE is not performing a commercially useful function.

1. *Work Force.* The DBE shall employ a work force (including administrative and clerical), separate and apart from that employed by the Contractor, other Subcontractors on the contract, or their affiliates. The DBE must use its workforce to perform or exercise responsibility for its portion of the contract. This does not preclude the employment by the DBE of an individual that has been previously employed by another firm involved in the contract, provided that the DBE can demonstrate it maintains an employer-employee relationship with the employee by being responsible for hiring, firing, training, assigning, and otherwise controlling the on-the-job activities of the employees, as well as ultimate responsibility for wage and tax obligations related to the employee. The routine transfer of work crews from another employer to the DBE will not be allowed.

2. *Supervision.* All work performed by the DBE shall be controlled and supervised by the DBE without duplication of supervisory personnel from the Contractor, other Subcontractors on the contract, or their affiliates. This does not preclude routine communication between the supervisory personnel of the DBE and other supervisors necessary to coordinate the contract work.

Appendix 12-2.9

3. *Materials.* DBE Subcontractors shall negotiate price, determine quality and quantity, order, install (where applicable) and pay for the materials(s) required to perform the work when material supply is included in their scope of work.

4. *Equipment.* DBE Subcontractors may supplement their equipment by renting or leasing additional equipment in accordance with customary industry practice provided the equipment is not rented/leased from the Prime Contractor or its affiliate, except as noted below. Before supplementing their equipment, the DBE must first own and operate at least one operational business-critical piece of equipment capable of independently providing a service under the contract. There may be rare instances in which a DBE may use a Prime Contractor's equipment, supplies, etc. to a limited degree (e.g., the DBE's backhoe breaks down and the DBE uses the Prime Contractor's backhoe for the rest of the day; use of a crane; etc.). Such limited use must be approved by the Department. Consequently, if a charge for the use of a Prime Contractor's equipment (distinct from the DBE's labor in operating the equipment) is part of the cost of the DBE's contract, it would be subtracted from the DBE credit allowed for the contract. Should back charges result in DBE participation falling below the goal(s), the Contractor shall be required to backfill.

F. Submission of Proposal. In submitting a proposal, a Bidder declares that it shall make commitments to those qualified DBEs whose participation the Bidder submits to meet the contract goal.

All Bidders shall submit a complete DBE Participation Package with their bid proposal. The DBE Participation Package shall include a summary of the confirmed DBE commitments (i.e., AAP 14LL); DBE confirmation on Department provided forms (i.e., AAP 20, AAP 22, and AAP23) for each DBE firm for the type and amount of work shown in the summary of commitments; and sufficient good faith effort documentation (if required). Confirmed DBE commitments are commitments where the proposed DBE participation is firm, the work is clearly defined, the correct NAICS codes have been identified, the DBE firm is certified to perform the work, and the proposed commitments have been verified by the DBE firm. The Bidder's summary of commitments shall include DBE name, DBE address, work category, and commitment amount.

In addition, per 49 CFR 26.11, all Bidders shall submit with their bid proposal a Bidder's List (i.e., CONR 80LL Bidder's List) which contains information for all Subcontractors, both DBEs and non-DBEs, who provided quotes on the contract. The Bidder's List shall include the Subcontractor's name and work code applicable to each scope of work the Subcontractor sought to perform in its quote. Failure to submit the required Bidders List information may result in rejection of the bid.

G. DBE Participation Package. For Federal-Aid contracts, all Bidders shall submit a complete DBE Participation Package to the Department with their proposal. The DBE Participation Package shall include confirmed DBE commitments; DBE confirmation, on Department provided forms (i.e., AAP 20, AAP 22, and AAP23), for each DBE firm for the kind and amount of work shown in the Bidder's commitments; and good faith effort documentation (if required). No additions, substitutions or deductions to the DBE commitments identified at time of letting will be considered as part of the DBE Participation Package.

A commitment to a DBE is expressed as a dollar amount agreed to by both the Bidder and the DBE for the performance of identified work, services or products. Commitments are for quantities of contract pay items, or associated to contract pay items for work, services or

products that are not measured in the same manner as the contract pay item. Commitments for less than the full scope of the contract pay item shall be indicated as such in the DBE Participation Package.

For each DBE Subcontractor, the Bidder shall indicate, in the DBE confirmation form (i.e., AAP 20 *DBE Subcontractor / Work Service / Professional Service Commitments / Confirmation*), the contract pay item number(s) of the work to be performed.

For each DBE Manufacturer, Fabricator, Material Supplier (including equipment rental without operator), Distributor, or Broker, the Bidder shall be responsible for the collection, review and submission of a fully executed DBE confirmation form (i.e., AAP 22 *DBE Material Commitments / Confirmation*) affirming that the responses received in the questionnaire, by its proposed DBE, indicate the performance of a commercially useful function, will be consistent with the preliminary counting of such participation toward the contract goal. A separate AAP 22 must be submitted for each separate and distinct contract pay item number(s) of the materials, supplies, articles, or equipment to be manufactured, fabricated, supplied, or otherwise provided. If the material, supplies, articles, equipment or service does not correspond to a specific contract pay item, the Bidder shall use a contract pay item(s) to which the activity relates.

For each DBE Service, the Bidder shall indicate, in the DBE confirmation form (i.e., AAP 20 *DBE Subcontractor / Work Service / Professional Service Commitments / Confirmation*), the contract pay item number(s) of the service to be provided. If the Service does not correspond to a specific Department contract pay item, the Bidder shall use a contract pay item(s) to which the activity relates.

For each DBE Trucking Firm, the Bidder shall indicate, in the DBE confirmation form (i.e., AAP 23 *DBE Trucking Commitments / Confirmation*), the contract pay item number(s) for which the trucking operations are to be performed. If the trucking operation does not correspond to a specific contract pay item, the Bidder shall use a contract pay item(s) to which the activity relates. The Bidder shall indicate the type of trucking operation to be performed, the number of trucks owned/leased, the number of trucks working on-site or off-site, rate per hour/ton/load/etc., duration or amount, and total dollar value of the proposed DBE commitment. The Bidder shall provide copies of all lease agreements utilized by the DBE Trucking Firm.

If the Bidder meets or exceeds the established DBE goal(s) for the contract with commitments to certified DBEs, it is not necessary for the Bidder to submit documentation of good faith efforts. However, if after review by the Department, a Bidder's commitments fall below goal, no additional time will be given to submit good faith efforts.

If the contract goal(s) is not met in full, then the Bidder shall provide documentation of its good faith efforts with their proposal, in accordance with §102-12H. *Good Faith Efforts* that demonstrate that the Bidder attempted but could not meet the goal(s).

If the Low Bidder fails to submit a complete DBE Participation Package (i.e., DBE commitments, DBE confirmation, and/or GFE) at time of letting they may be deemed non-responsive by the Department.

For tracking and oversight purposes, after the Low Bidder's commitments and/or good faith efforts have been accepted by the Department, the Low Bidder will be notified by email to input their DBE Participation Package, as submitted with their proposal, in EBO within 5 calendar days. On Design Bid Build Best Value contracts, notification will be sent upon designation. For those items of work where a DBE Subcontractor is performing less than 100% of a contract pay item, the Bidder shall explain, in writing, the scope of work to be performed by the DBE and shall indicate those items as such in EBO (i.e., split item).

Once the Low Bidder has completed all entries in EBO, they shall notify the Construction Pre-Award Unit at construction.civilrights@dot.ny.gov. Once the Low Bidder has received notification by the Department that their entries have been accepted, each DBE shall acknowledge the commitment in EBO within 10 calendar days.

The Contractor shall execute subcontracts, agreements, or purchase orders, as appropriate, with each DBE for the type and amount of work identified in the approved AAP19 *DBE/MBE/WBE/SDVOB Schedule of Participation*, no later than 10 days after contract award.

H. Good Faith Efforts. If the Low Bidder fails to meet the DBE contract goal, the Department will evaluate the good faith efforts the Bidder made to obtain DBE participation to determine if the efforts are sufficient to recommend award of the contract. Efforts to obtain DBE participation that are merely pro forma are not good faith efforts, nor are efforts that, even if they are sincerely motivated, given all relevant circumstances, could not reasonably be expected to produce a level of DBE participation sufficient to meet the goal.

If the Bidder has not met the DBE goal, it shall submit sufficient documentation that substantiates good faith efforts. Such documentation shall include, at a minimum, the AAP10 *DBE/MBE/WBE/SDVOB Solicitation Log*, all forms of solicitation inquiries that were returned as undeliverable, quotations submitted by DBEs that were not selected for participation, quotations submitted by non-DBEs that were selected for comparison, and an explanation for the Bidder's action in each case.

In order to evaluate the Bidder's good faith efforts, the Department will consider the quality, quantity, and intensity of the different kinds of efforts that the Bidder has made.

Below is a list of the types of actions which the Department will consider as part of the Bidder's good faith efforts to obtain DBE participation. It is not intended to be a mandatory checklist, nor is it intended to be exhaustive or exclusive. Other factors or types of efforts may be relevant in appropriate cases.

1. Securing participation by certified DBE firms for work that they are listed to perform that is in the contract. Only DBEs certified by the NYS Unified Certification Program (NYSUCP) shall be used to fulfill the established goal on Federal-Aid contracts.
2. For all work, soliciting, at a minimum, certified DBEs within 100 miles of the contract location.
3. The Bidder shall conduct market research to identify small business contractors and suppliers and solicit, through all reasonable and available means, the interest of all certified DBEs that have the capability to perform the work of the contract. This may include attendance at pre-bid and business matchmaking meetings and events; advertising and/or written notices; posting of notices of sources sought and/or requests for proposals, written notices or emails to all certified D/M/WBEs listed in the appropriate directory of certified firms that specialize in the areas of work desired and which are located in the area or surrounding area.

The Bidder shall solicit this interest as early in the bidding process as practicable, to allow the DBEs to respond to the solicitation and submit a timely offer. The Bidder shall determine with certainty if the DBEs are interested by taking appropriate steps, including following up the initial solicitation with at least one additional solicitation via a different media. The Bidder shall keep records of efforts to solicit and negotiate with DBEs as evidence of good faith efforts, using the *Solicitation Log* as a continuing record.

4. Selecting portions of the work to be performed by DBEs in order to increase the likelihood that the DBE goal will be achieved. This includes, where appropriate, either breaking down operations or combining like or related operations into logistically and economically feasible units to facilitate DBE participation, even when the Contractor might prefer to perform these work items with its own forces. This may include, where possible, establishing flexible time frames for performance and delivery schedules in a manner that encourages and facilitates DBE participation.
5. Providing interested DBEs with adequate information on where and how to obtain the plans, specifications, and requirements of the contract in a timely manner to assist them in responding to a solicitation with their timely offer.
6.
 - a. *Negotiating in good faith with interested DBEs.* It is the Bidder's responsibility to make a portion of the work available to DBE Subcontractors and material suppliers and to select those portions of the work or material needs consistent with the available DBE Subcontractors and material suppliers, to facilitate DBE participation. Evidence of such negotiation includes the names, addresses, and telephone numbers of DBEs that were considered; a description of the information provided regarding the plans and specifications for the work selected for subcontracting; and evidence as to why additional agreements could not be reached for DBEs to perform the work.
 - b. *Additional Costs.* The fact that there may be some additional costs involved in finding and using DBEs is not in itself sufficient reason for a bidder's failure to meet the contract DBE goal, as long as such costs are reasonable. The ability or desire of a bidder to perform the work of a contract with its own organization does not relieve the Bidder of the responsibility to make good faith efforts. Bidders are not, however, required to accept higher quotes from DBEs if the Department determines the price difference to be excessive or unreasonable.
7.
 - a. *Not rejecting DBEs as unqualified.* The Bidder shall not reject DBEs as unqualified without sound reasons based on a thorough investigation of their capabilities. The Bidder's standing within its industry, membership in specific groups, organizations or associations, and political or social affiliations (for example union vs. non-union status) are not legitimate causes for rejection or non-solicitation of proposals in the Bidder's efforts to meet the contract goal. Rejection of the DBE because its quotation for the work was not the lowest received is not considered good faith effort. Nothing in this paragraph shall be construed to require the Bidder to accept unreasonable quotes in order to satisfy contract goals.
 - b. *Replacement Prices.* A prime contractor's inability to find a replacement DBE at the original price is not sufficient to support a finding that good faith efforts have been made to replace the original DBE. The fact that the contractor has the ability and/or desire to perform the contract work with its own forces does not relieve the contractor of the obligation to make good faith efforts to find a replacement DBE, and it is not a sound basis for rejecting a prospective replacement DBE's reasonable quote.
8. Making efforts to assist interested DBEs in obtaining bonding, lines of credit or insurance as required by the Department or the Bidder.

9. Making efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance.

10. Where available, effectively using the services of available minority/women focused media, trade associations, and contractor groups; local, state, and Federal minority/women business assistance offices; and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of DBEs.

11. Stating future commitments to use DBEs after contract award is not considered to be responsive to the contract solicitation requirements or to constitute good faith efforts.

A Bidder shall also submit a detailed explanation identifying any circumstances unique to the contract that were deterrents to meeting the goal(s) (e.g., night work, small quantities over multiple locations, specialized work, etc.); detailed rationale as to why a specific scope of work is not considered to be a subcontract item and therefore was not solicited; and a detailed explanation for any scope of work deemed "self-performing" without the intent to split the work.

I. Pre-Award Approval. In order to award a contract to a Bidder that has failed to meet the DBE contract goal(s), the Department must determine that the Bidder's good faith efforts were those that a Bidder actively and aggressively seeking to meet the goal(s) would make given all relevant circumstances.

If the Department determines that the Low Bidder has failed to meet the goal and good faith effort requirements, the Department may issue a finding of non-responsiveness. Before awarding the contract to a subsequent bidder, the Department will provide the Low Bidder an opportunity for administrative reconsideration by an official who did not take part in the original determination.

J. Administrative Reconsideration. If the Low Bidder is deemed non-responsive due to failure to meet the civil rights requirements, and believes they have good cause, they shall have 5 calendar days from notification to request an Administrative Reconsideration. The Low Bidder will have the opportunity to provide argument and written documentation of good faith efforts made prior to letting, and to meet in person with the Department's reconsideration official upon notification concerning the issue of whether it met the goal or made adequate good faith efforts to do so. The Department will send the Low Bidder a written decision on reconsideration, explaining the basis for finding that the Low Bidder did or did not meet the goal or make adequate good faith efforts to do so.

K. Bidder's Failure to Comply with DBE Program Requirements. The Department's acceptance of the Low Bidder's proposal is conditioned upon the Low Bidder's fulfillment of the DBE participation requirements. Failure by the Low Bidder to submit a complete DBE participation package may be grounds for rejection of the proposal as non-responsive and the deposit may be subject to forfeiture.

CHANGED CONDITION CLAUSES

DIFFERING SITE CONDITIONS. 23 CFR 635.109(a)(1)

During the progress of the work, if subsurface or latent physical conditions are encountered at the site differing materially from those indicated in the contract or if unknown physical conditions of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in the work provided for in the contract, are encountered at the site, the party discovering such conditions shall promptly notify the other party of the specific differing site conditions before the site is further disturbed and before the affected work is performed.

Upon written notification, the Engineer will investigate the site conditions, and if it is determined that the conditions materially differ and cause an increase or decrease in the cost or time required for the performance of any work under the contract, an adjustment, excluding anticipated profits, will be made and the contract modified in writing accordingly. The Engineer will notify the Contractor of the determination as to whether an adjustment to the contract is warranted.

No contract adjustment which results in a benefit to the Contractor will be allowed unless the Contractor has provided the required written notice.

SUSPENSIONS OF WORK DIRECTED BY THE ENGINEER. 23 CFR 635.109(a)(2)

If the performance of all or any portion of the work is suspended or delayed by the Engineer in writing for an unreasonable period of time (not originally anticipated, not customary, or not inherent to the construction industry) and the Contractor believes that it is due additional compensation and/or contract time is due as a result of such suspension or delay, the Contractor shall submit to the Engineer in writing a request for adjustment within 7 calendar days of receipt of the notice to resume work. The request shall set forth the reasons and support for such adjustment.

Upon receipt, the Engineer will evaluate the Contractor's request. If the Engineer agrees that the cost and/or time required for the performance of the contract has increased as a result of such suspension and the suspension was caused by circumstances beyond the control of and not the fault of the Contractor, its Suppliers or subcontractors at any approved tier, and not caused by weather, the Engineer will make an adjustment (excluding profit) and modify the contract in writing accordingly. The Contractor will be notified of the Engineer's determination whether an adjustment to the contract is warranted. No contract adjustment will be allowed under this clause to the extent that performance would have been suspended or delayed by any other cause, or for which an adjustment is provided or excluded under any other term or condition of this contract. No contract adjustment will be allowed unless the Contractor has provided the required written request for adjustment within the time prescribed.

SIGNIFICANT CHANGES IN THE CHARACTER OF WORK. 23 CFR 635.109(a)(3)

The Engineer reserves the right to make, in writing, at any time during the work, such changes in quantities and such alterations in the work as are necessary to satisfactorily complete the project. Such changes in quantities and alterations shall not invalidate the contract nor release the Surety, and the Contractor agrees to perform the work as altered.

If the alterations or changes in quantities significantly change the character of work under the contract, whether such alterations or changes are in themselves significant changes in the character of work, or by affecting other work cause such other work to become significantly different in character, an adjustment, excluding anticipated profits, will be made to the contract. The basis for the adjustment shall be agreed upon prior to the performance of the work. If a basis cannot be agreed upon, then an adjustment will be made by the Department, either for or against the Contractor, in such amount as determined to be fair and equitable.

If the alterations or changes in quantities do not significantly change the character of the work to be performed under the contract, the altered work will be paid for as provided elsewhere in the contract.

The term "significant change" shall be construed to apply only to the following circumstances: when the character of the work as altered differs materially in kind or nature from that involved or included in the original proposed construction; or when a Major Item of work, as defined elsewhere in the contract, is increased in excess of 125 percent, or decreased below 75 percent of the original contract quantity. Any allowance for a change in unit price shall apply only to that portion of work in excess of 125 percent of the original contract item quantity, or in the case of a decrease below 75 percent, to the actual amount of work performed.

REQUIRED IN ALL FEDERAL AID CONSTRUCTION CONTRACTS.

Appendix 12-2.16

DISPUTED WORK AND DISPUTE RESOLUTION

The term "dispute" shall mean a disagreement between the Contractor and the Department concerning a matter of contract performance or contract compensation. Dispute resolution may involve adjustments in compensation, adjustment of contract pay-items, the addition of new contract pay-items to the contract, and/or extension of time for performance. The Contractor shall continue the work during the pendency of the dispute.

It is the goal of the Department to resolve disputes that may arise under the contract in a timely, just and fair manner consistent with the terms of the contract. The dispute resolution process may be undertaken at any time from the contract award to the issuance of the final payment by the Office of the State Comptroller. The dispute resolution process recognizes and will take into consideration the risks and controls inherent in construction which the Contractor or the Department have agreed to assume pursuant to the terms of the contract. The Contractor is encouraged, when initiating a dispute, to provide information concerning measures that may be taken to mitigate the damages.

Disputes of any nature shall be made in strict accordance with the contract provisions, including the notice and recordkeeping provisions. The Department reserves the right to modify specifications or delete portions of the work being disputed in order to mitigate damages.

A. Disputed Work. If the Contractor is of the opinion that any work directed by the Engineer to be completed as contract work is extra work and not contract work, or that any order of the Engineer exceeds the requirements of the provisions of the contract, the Contractor shall provide the Department written notice and maintain records. After submitting the required notice, the Contractor shall complete its dispute submission in accordance with Section E. *Required Content of Dispute Submission.*

1. Determined to Be Contract Work. If the Department determines that the disputed work is contract work and not extra work, or that the direction given to the Contractor and protested was proper, the Department will direct the Contractor to continue the disputed work and the Contractor shall promptly comply. The Contractor's right to further pursue a dispute for extra compensation or damages will not be affected in any way by the Contractor complying with the directions of the Department to proceed with the work, provided the Contractor continues to keep and submit daily records to document all labor, material and equipment used for disputed work in accordance with *Extra Work and Time Related Compensation*. Section C.1. *Daily Summary to the Engineer.*

2. Determined to Be Extra Work. If the Department, determines that the disputed work is extra work and not contract work, or that a direction given to the Contractor and protested was not proper, then a contract adjustment will be made. Compensation will be made for such work in accordance with *Extra Work and Time Related Compensation*. The Contractor shall continue to maintain force account records until receipt of the change order approved by the Office of the State Comptroller. Documented, additional, actual and reasonable costs incurred by the Contractor pursuant to following a written order to perform work (that was subsequently contained in a change order which was disapproved) will be considered reimbursable. Eligibility for additional compensation shall cease upon notification of the disapproval of a change order.

B. Time Related Disputes. The term "time related dispute" shall mean any dispute arising from any event which affects the scheduled time of performance. This paragraph is intended to cover all such events which include major deductions or increases to quantities of work, suspension of work and cancellation of contract, and termination, as well as actions, forces or

factors, such as "delay", "disruption", or "interference."

If the Contractor believes that it is or will be entitled to additional compensation for time related disputes, whether due to delay, extra work, disputed work, breach of contract, or other causes, the Contractor shall comply with the notice and recordkeeping provisions. The Department will have no liability and no adjustment will be made for any damages which accrued more than 15 calendar days prior to the filing of written notice with the Engineer. The primary tool used to evaluate the time of performance is the Contractor's progress schedule. Department approval of a schedule or a revised schedule does not entitle the Contractor to a time extension or any time related damages. Compensation will be made for such work in accordance with *Extra Work and Time Related Compensation* Section D. *Time Related Dispute Compensation*.

C. Acceleration Disputes. The Contractor may not dispute costs associated with acceleration of the work unless the Department has given prior express written direction to the Contractor to accelerate its effort. The Contractor shall always have the basic obligation to complete the work in the time frames set forth in the contract. Lack of express written direction on the part of the Department shall never be construed as approval.

If the Contractor does accelerate its work efforts pursuant to written direction from the Department, compensation will be made in accordance with *Extra Work and Time Related Compensation* Section E. *Acceleration Compensation*. The Department, in determining whether any compensation is warranted, will evaluate the facts and circumstances which led to the acceleration to determine whether they were in the Contractor's control.**D. Non-Compliance Disputes.** The term "non-compliance dispute" shall mean any dispute arising from any event which affects the Contractor's ability to comply with the general provisions of the contract. This includes, but is not limited to, liquidated damages associated with the Contractor's failure to comply with the civil rights requirements including Commercially Useful Function; Good Faith Efforts; Substitutions and Terminations.

If the Contractor is of the opinion that any order or action of the Engineer exceeds the requirements of the provisions of the contract, the Contractor shall provide the Department written notice and maintain records in accordance with §104-06 *Notice and Recordkeeping*. If the Department determines that remedies imposed on the Contractor for non-compliance were not proper, then a contract adjustment will be made.

E. Review Time Periods for Disputes. After providing written notice, the Contractor shall, as soon as the information is available or ascertainable, provide the Engineer with a summary of its dispute contentions in accordance with Section F. *Required Content of Dispute Submission*, in sufficient detail so that the Engineer may make a determination. The Engineer will make an initial response, in writing, within 21 calendar days after the Contractor provides the dispute submission.

If a dispute is not resolved by the Engineer to the satisfaction of the Contractor, within 10 workdays of receipt of the Engineer's written decision or the Engineer fails to reply within 21 calendar days, the Contractor shall notify the Regional Director, in writing, with a copy to the Engineer, of its contentions relative to the dispute.

If the dispute is not resolved by the Regional Director to the satisfaction of the Contractor, within 15 calendar days of receipt of the Regional Director's written decision or the Regional Director fails to reply within 30 calendar days, the Contractor shall notify the Commissioner, in writing, with copies to the Engineer and the Regional Director, of its contentions relative to the dispute, indicating the substance of previous communication on the issue with the Engineer and the Regional Director and its rebuttal of their previous findings.

1. Disputes to the Commissioner Up to \$50,000. For all disputes to the Commissioner of \$50,000 or less, the Department will respond in writing within 45 calendar days of receipt of the dispute. If any additional documentation supporting the dispute or relating to the subject matter of the dispute is required, the Contractor shall provide such information within 30 calendar days of the request unless another time period is agreed to. The Department's written response to the additionally documented dispute will be submitted to the Contractor within 15 calendar days after receipt of said additional documentation or within a period no greater than that taken by the Contractor in producing said additional documentation, whichever is greater. If the Contractor disputes the Department's written response, or the Department fails to respond within the time prescribed, the Contractor may so notify the Department in writing within 15 calendar days of receipt of the Department's response, or within 15 calendar days of the Department's failure to respond. Upon the Contractor's request, the Department shall schedule a meeting or conference. By agreement between the Department and the Contractor, such time periods may be modified.

2. Disputes to the Commissioner Over \$50,000 to \$250,000. For all disputes to the Commissioner over \$50,000 and less than or equal to \$250,000, the Department will respond in writing within 60 calendar days of receipt of the dispute. If any additional documentation supporting the dispute or relating to the subject matter of the dispute is required, the Contractor shall provide such information within 30 calendar days of the request unless another time period is agreed to. The Department's written response to the additionally documented dispute will be submitted to the Contractor within 30 calendar days after receipt of said additional documentation, or within a period no greater than that taken by the Contractor in producing said additional documentation, whichever is greater. If the Contractor disputes the Department's written response, or the Department fails to respond within the time prescribed, the Contractor may so notify the Department in writing within 15 calendar days of receipt of the Department's response, or within 15 calendar days of the Department's failure to respond. Upon the Contractor's request, the Department will schedule a meeting or conference and notify the Contractor within 30 calendar days of the scheduled date. By agreement between the Department and the Contractor, such time periods may be modified.

3. Disputes to the Commissioner over \$250,000 or of Undetermined Value. For disputes to the Commissioner over \$250,000 or that have an undetermined value, the Department will respond in writing within 90 calendar days of receipt of the dispute. If any additional documentation supporting the dispute, or relating to the subject matter of the dispute, is required, the Contractor shall provide such information within 30 calendar days unless another time period is agreed to. The Department's written response to the additionally documented dispute will be submitted to the Contractor within 60 calendar days after receipt of the said additional documentation, or within a period no greater than that taken by the Contractor in producing said additional documentation, whichever is greater. If the Contractor disputes the Department's written response, or the Department fails to respond within the time prescribed, the Contractor may so notify the Department in writing within 30 calendar days after the receipt of the Department's response, or within 30 calendar days of the Department's failure to respond. Upon the Contractor's request, the Department will schedule a meeting or conference and notify the Contractor within 30 calendar days of the scheduled date. By agreement between the Department and the Contractor, such times periods may be modified.

F. Required Content of Dispute Submission. All disputes shall be submitted in writing to the Engineer and shall be in sufficient detail to enable the Engineer to ascertain the basis and the

amount of each dispute. If requested and as a minimum, the following information shall be provided when such information is ascertainable by the Contractor:

1. General.

- a. The date on which actions resulting in the dispute occurred or conditions resulting in the dispute became evident.
- b. A copy of the notice of dispute for the specific dispute by the Contractor.
- c. To the extent known, the name, function, and activity of each Department official, or employee or agent, involved in, or knowledgeable about facts that gave rise to such dispute.
- d. The name, function, and activity of each Contractor or Subcontractor official, or employee, involved in, or knowledgeable about facts that gave rise to such dispute.
- e. The identification of any pertinent documents, and the substance of any material communication relating to such dispute.
- f. A statement as to whether the additional compensation or extension of time if requested is based on the provisions of the contract or is an alleged breach of contract.
- g. If an extension of time is also requested, the specific days for which it is sought and the basis for such request as determined by an analysis of the construction progress schedule.

2. Time Related Dispute Submissions.

- a. A description of the operations that were delayed, the reasons for the delay, how they were delayed, including the report of all scheduling experts or other consultants, if any.
- b. The documented process of establishing, maintaining and updating the progress schedule, showing when the delay occurred and how it affected the schedule, in accordance with the Progress Schedule or a CPM specification, if applicable.
- c. The amount of additional compensation sought in accordance with Extra Work and Time Related Compensation Section D. *Time Related Dispute Compensation*.

3. Acceleration Dispute and Disputed Work Submissions.

- a. A detailed factual statement of the dispute providing all necessary dates, locations and items of work affected by the dispute.
- b. The specific provisions of the contract which support the dispute and a statement of the reasons why such provisions support the dispute.
- c. The amount of additional compensation sought, and a breakdown of that amount shall conform to the requirements of *Extra Work and Time Related Compensation* Section B. *Force Account Work* except for acceleration disputes which shall conform to the requirements and categories specified in *Extra Work and Time Related Compensation*-Section D. *Time Related Dispute Compensation*.

G. Required Certification of Disputes Over \$50,000. When submitting any dispute over \$50,000, the Contractor shall certify in writing, under oath and in accordance with the formalities required by the contract, as to the following:

- 1. That supporting data is accurate and complete to the Contractor's best knowledge and belief,
- 2. That the amount of the dispute is based on sound engineering principles, is supported by sound mathematical and cost accounting principles and the dispute itself is in accordance with the terms of the contract, and accurately reflects what the Contractor in good faith believes to be the Department's liability; and,

3. That the dispute and the amount of the dispute is in full compliance with the Federal False Claims Act, 31 U.S. Code Section 3729, and New York State False Claims Act, NYS Finance Law Article XIII; and that the Contractor acknowledges that if determined to be in violation of these acts by a court of proper competent jurisdiction, such violating Contractor shall be subject to liability for a civil penalty, plus up to three times the damage the State sustains by such violation.

4. The certification shall be executed by:

- a. The Contractor, if the Contractor is an individual; or,
- b. A senior company official in charge at the Contractor's plant or location involved or an officer or general partner of the Contractor having overall responsibility for the conduct of the Contractor's affairs, if the Contractor is not an individual.

H. Auditing of Records. A Contractor who has filed a dispute, or Subcontractor, Manufacturer, Fabricator or Material Supplier on whose behalf a dispute has been filed, shall have the following records available for audit at any time following the filing of such dispute, and shall cooperate with the auditors, whether or not such dispute is part of a suit pending in the courts of this State. The audit may be performed by employees of the Department or by an independent auditor appointed by the Department and may begin on 15-day notice to the Contractor, Subcontractor, Manufacturer, Fabricator or Material Supplier as is appropriate. The Contractor, Subcontractor, Manufacturer, Fabricator or Material Supplier shall cooperate with the auditors. The Department will maintain the audit, its backup, reports, schedules and conclusions as confidential material. Failure to maintain and retain sufficient records shall constitute a waiver of that portion of such dispute that cannot be verified and shall bar recovery thereunder. In the event the Contractor fails to substantially furnish the required reports and accounting records, such failure shall constitute a waiver of the dispute for payment other than for payment at contract unit prices for the work performed. The Contractor will be allowed to review the audit findings and will be allowed 30 calendar days to respond to any items disallowed by the audit.

Without limiting the generality of the foregoing, the auditors shall have available to them and the Contractor agrees to provide access to and true copies of the original, in whatever format the records are created/maintained, of the following documents:

1. All documents related to the preparation of the Contractor's bid including the final calculations on which the bid was based.
2. All documents which relate to each and every dispute together with all documents which support the amount of damages as to each dispute.
3. Daily time sheets, superintendent diaries or log sheets and foreperson's daily reports.
4. Union agreements and reports, if any.
5. Insurance policies, welfare and benefits records or plans for union and non-union personnel.
6. Payroll register, individual employee earnings records and payroll tax returns.
7. Material invoices, purchase orders, and all material and supply acquisition contracts.
8. Material cost distribution work sheet.
9. Equipment records (list of company equipment, rates, depreciation schedules, daily equipment reports or logs, fueling logs or records, equipment lease purchase agreements, and equipment purchase invoices).
10. Depreciation records on all company equipment whether such records are maintained by the company involved, its accountant, or others.
11. If a source other than depreciation records is used to develop costs for the Contractor's

internal purposes in establishing the actual cost of owning and operating equipment, all such other source documents.

12. Vendor rental agreements, subcontractor invoices, agreements and back charge records.

13. Subcontractor payment certificates.

14. Canceled checks (payroll and vendors).

15. Job cost ledger or report and job payroll ledger.

16. General ledger, general journal (if used), and all subsidiary ledgers and journals together with all supporting documentation pertinent to entries made in these ledgers and journals.

17. Cash receipts, cash disbursements journal, purchase journal, petty cash journal and supporting vouchers.

18. Audited and unaudited financial statements for all years during operations on this contract.

19. Documents which reflect the Contractor's actual overhead during the years contract work was performed.

20. Work sheets used to prepare the dispute establishing the cost components for items of the dispute including, but not limited to, labor, benefits and insurance, materials, equipment, subcontractors, and all documents which establish the time periods, individuals involved, the hours and the rates for the individuals.

I. Contract Closeout Process. A dispute, or a portion thereof, that has been previously submitted to the Department which remains unresolved to the satisfaction of the Contractor, may be submitted for Department review in connection with the closeout process. The records made, and recommendations or actions of a facilitator, a Dispute Review Board, or any other dispute resolution method, shall be off the record, non-binding, confidential, and may not be used in any future litigation.

1. Contract Closeout Meeting. If requested by the Contractor, the Department will schedule a contract closeout meeting with the Office of Construction in Albany. The contract closeout meeting process involves meeting(s) with the Contractor and its representatives and Department personnel to amicably resolve all remaining disputes of the Contract. In lieu of pursuing the closeout meeting process, the Contractor may elect to utilize the Gatekeeper process.

2. Claims. If any dispute, or portion thereof, remains unresolved following the meeting(s) or conference(s) and the payment of the final agreement, the Contractor may file a claim in the New York State Court of Claims in accordance with law and the provisions of the Contract.

EXTRA WORK AND TIME RELATED COMPENSATION.

The Contractor will be compensated for extra work by agreed price in accordance with Section A. *Agreed Price Work*, or by force account in accordance with Section B. *Force Account Work*.

A. *Agreed Price Work.* Agreed prices for new items of work or materials in accordance with one of the methods outlined below may be accepted by the Engineer and incorporated into a change order as the Department may deem them to be just and fair and beneficial to the State. An agreed price may be offered by the Contractor and accepted by the Engineer for a defined quantity of additional work. The Contractor shall provide an agreed price proposal generally not later than 7 calendar days prior to beginning the work. If a price has not been agreed to, in writing, prior to starting the work, the Contractor shall keep and submit daily records to document all labor, material and equipment used to complete the work in accordance with Section C.1. *Daily Summary*. A change order containing an agreed price not supported by one of the following may be subsequently rejected by the Department or the Office of the State Comptroller.

1. *Original/Adjusted Contract Bid Price.* The original contract bid price, or the original contract bid price adjusted for documented increase or decrease in labor cost, material cost, equipment rate, mobilization, and/or site conditions.

2. *Weighted Average Price.* The statewide or regional weighted average price (WAP) for a contract pay item for minimum of 3 contracts of similar type, quantity, and/or location of work over a one to two-year period; as shown in the Pay Item Catalog (PIC). The Engineer may adjust the WAP for documented increase or decrease in labor, materials, equipment, mobilization, and/or site conditions.

3. *Average of 3 Lowest Bidders.* The average bid price for a contract pay item by the 3 lowest responsible bidders on the contract, including the Contractor, presented in the Tabulation of Bids. If less than 3 responsible bids were received, this option shall not be used.

4. *Price Analysis.* A price analysis shall be based on an estimated breakdown of charges listed in Section B. *Force Account Work*, using the labor, equipment and other rates available when the agreed price is developed by the Contractor. The analysis shall be based on crew composition, material prices, equipment production and overall production rates that are reasonable in comparison with contract bid price work. Price analyses shall be submitted in a format acceptable to the Department. Price Analysis forms are available from the Department's website at www.dot.ny.gov/main/business-center/contractors/construction-division/forms.

The Contractor will be reimbursed for labor in accordance with Section B.1.a *Labor*. The Contractor will be reimbursed for each class of labor, not individual workers, at the prevailing wage rate for that trade and classification.

The Contractor will be reimbursed for materials in accordance with Section B.1.b *Materials*.

The Contractor will be reimbursed for equipment in accordance with Section B.1.c *Equipment*. Equipment rates shall be used with no rate adjustment factor and no regional adjustment factor. An appropriate type and size of equipment similar to that available on the contract site, if present, shall be used.

The Contractor will be reimbursed for required insurances in accordance with Section B.1.d *Insurance*.

The Contractor will be reimbursed for overhead at 10% of items Section B.1.a. *Labor*, Section B.1.b. *Materials* and Section B.1.c. *Equipment*.

The Contractor will be reimbursed for profit at 10% of items Section B.1.a. *Labor*, Section B.1.b. *Materials* and Section B.1.c. *Equipment*.

Due to the cost and effort associated with development, a price analysis should generally be reserved for extra work under an individual contract pay item or a single price analysis, of more than \$5,000.

B. Force Account Work. Where there are no applicable unit prices for extra work and agreed prices cannot be readily established or substantiated, the Contractor will be reimbursed by Force Account for the actual, reasonable and verifiable cost of the items listed below. The Contractor shall maintain and submit force account records in accordance with Section C. *Force Account Report*.

1. Contractor Costs. At the preconstruction meeting, the Contractor should provide the Engineer documentation supporting its insurance rates for the current period and provide updates within 30 days after the renewal date, to assist in timely preparation and review of force account reports. All rates will be those in effect at the time the work is performed.

a. *Labor.* Necessary labor costs include wages, supplemental (fringe) benefits, FICA, Medicare, Federal Unemployment Tax (FUTA), State Unemployment Insurance (SUI), paid holidays, paid sick leave, and other such reasonable charges that are paid by the Contractor pursuant to existing written agreements with its employees and/or labor organizations. Labor shall be recorded in hours to the nearest half hour.

(1) *Wages and Fringe Benefits.* The Contractor will be reimbursed for each worker separately at the actual payroll rate; an average rate based on different workers will not be accepted. The wage rate for an individual worker may be up to 150% of the prevailing wage and 100% of the supplemental (fringe) benefits, provided the Contractor documents through certified payrolls that the worker has and continues to be paid more than the prevailing wage for contract work. The Contractor shall obtain the approval of the Engineer for wage rates for individual workers over 110% of the prevailing wage prior to that individual starting work.

There are no prevailing wage rates for foremen/forewomen. Foremen/forewomen are typically paid at a higher rate than the trades they supervise, due to additional responsibilities. The reimbursement for foremen/forewomen will be based on previous certified payrolls or other payroll records for that individual, if available, provided crew composition and overall production rates are reasonable.

If the Contractor is obligated by a labor agreement to pay a full day's pay for an individual in a required labor classification and cannot find other work on that day for that individual, the Contractor will be reimbursed for a full day's pay for that individual.

Professional or technical personnel specifically required or agreed to by the Department, in writing, to be present for specific critical work operations will be reimbursed as a direct labor cost. The reimbursement for these professional or technical personnel will be based on previous payrolls for that individual, as

certified by the employer, or by comparison to costs for similarly qualified personnel.

No reimbursement will be made for travel, lodging, bonuses, or other similar payments made to workers.

(2) *Standard Markups.* The Contractor will be reimbursed for FICA, Medicare, Federal Unemployment Tax (FUTA), State Unemployment Insurance (SUI), paid holidays, and paid sick leave using the Standard Labor Markup Rate, on all wages, not including supplemental (fringe) benefits. The Standard Labor Markup Rate, initially 15.2%, may be modified by the Department via Official Issuance.

The Contractor will be reimbursed for FICA and Medicare using the Standard Fringe Markup Rate on all supplemental (fringe) benefits paid in a payroll check or in cash to the employee. The Standard Fringe Markup Rate, initially 7.65%, may be modified by the Department via Official Issuance.

b. *Materials.* Materials are necessary products incorporated in the temporary or permanent work. The Contractor will be reimbursed for the costs of materials, including transportation to the site and sales taxes for materials not permanently incorporated into the work. Material transportation may be accounted for as part of the material unit price, a material unit price for transportation, a fee for transportation, or equipment and operator charges. Contractor or Subcontractor costs for transportation of materials shall be accounted for as labor and equipment in accordance with Section B.1.a. Labor and Section B.1.c. Equipment respectively. Because force account work has no associated pay lines/limits, materials will be measured as actual quantities delivered and incorporated, including any required overlap, and appropriate allowances for waste and/or disposal due to construction operations and/or installation practices.

The Contractor will be reimbursed, including sales taxes when applicable, for expendable materials such as oxygen, acetylene, propane, welding rods, form lumber, form oil, grinding wheels, saw blades, hammer and drill bits, drill steel, and tooth-bits consumed in progressing the work. Other small tools and tool/equipment supplies used or consumed in progressing the work are considered to be included in overhead and no separate reimbursement will be made.

Material acquired by direct purchase shall be documented by bills or acceptable invoices. All prices on used material incorporated in either temporary or permanent work shall be billed at a fair value, less than the original cost when new. A reasonable salvage credit will be determined by the Engineer in coordination with the Contractor for substantial salvageable material recovered.

c. *Equipment.* Equipment, other than small tools, used by the Contractor shall be of suitable size and suitable capacity required for the work to be performed. If the Contractor elects to use equipment of a higher rate than the equipment suitable for the work, payment will be made at the rate applicable to the suitable equipment. The equipment actually used and the suitable equipment upon which the rate is based will be recorded as a part of the Force Account Report. Usage will be recorded in hours to the nearest half hour to align with the recorded labor associated with the work. The Engineer will verify the suitability of the equipment. If there is a differential in the rate of pay of the operator of oversize or higher rate equipment, the rate paid for the operator will likewise be related to the suitable equipment.

(1) *Mobilization Costs.* If the Contractor does not have a needed type or piece of equipment on the contract site or the equipment is not available to perform the extra work, the Contractor will be reimbursed for the reasonable cost of mobilization to and demobilization away from the work site. Mobilization and demobilization include the cost of transporting equipment; 50% of the hourly ownership rate of transported equipment during transportation, including loading, unloading, assembly, and disassembly; and fees for any required regulatory permits. Costs for demobilization away from the work site will not be paid if the equipment is kept on the site and performs additional contract bid price work.

(2) *Ownership Costs.* The Contractor will be reimbursed for its costs for providing equipment at the rates listed in the Cost Recovery software produced by Equipment Watch (hereafter referred to as Cost Recovery). The hourly ownership rates will reimburse the Contractor for all non-operating costs of providing equipment, including depreciation on the original purchase, costs of major overhaul repairs, facilities capital, normal risk insurance, property taxes, storage, licenses, security, record keeping, and mechanic's supervision.

The hourly ownership rate will be the Cost Recovery monthly rate divided by 176, multiplied by the rate adjustment factor for the equipment model year and then multiplied by the regional adjustment factor. If the Contractor has a piece of equipment remanufactured, rebuilt, or significantly altered, the rate adjustment factor may be modified, as documented by Equipment Watch.

For equipment required to be present and operating, the Contractor will be reimbursed for the product of the hours of actual use, multiplied by the hourly ownership rate.

For equipment required to be present; dedicated exclusively to the force account, not available for mobilization elsewhere, and not used on contract bid price work that day; the Contractor will be reimbursed for the product of the remaining non-operating hours in the shift, multiplied by 50% of the hourly ownership rate.

Equipment that is not required to be present will not be eligible for reimbursement of non-operating hours. If the Engineer directs or agrees that equipment mobilized for the operation is no longer required to be present, the Contractor may demobilize the equipment. If the equipment is demobilized, and subsequently determined to be required to be present, the Contractor will be reimbursed for remobilization.

For equipment without an operator that is designed to operate on a continuous long-term basis, such as a pump, portable variable message sign (PVMS), or temporary traffic signal, the Contractor will be reimbursed for a maximum of 176 hours a month.

Equipment with an hourly ownership rate of less than \$2 or a current purchase price of less than \$500 will be considered as small tools and equipment and will not be directly reimbursed.

(3) *Operating Costs.* The hourly operating rate includes preventative and field maintenance, fuel, lubricants, and other operating expenses as outlined in Cost Recovery, not including consumables or the operator's wages. The Contractor will be reimbursed for the product of the number of hours of actual use multiplied by the hourly operating rate. No reimbursement for operating costs will be made for equipment that is not operating.

Appendix 12-2.26

(4) *No Established Rate.* If rates are not established in Cost Recovery for a piece of equipment, the Contractor shall contact the Cost Recovery publisher, Equipment Watch to establish rates. If Equipment Watch will not establish rates, the Department, in coordination with the Contractor, may establish rates for ownership costs and operating costs for that piece of equipment consistent with its cost and expected life.

(5) *Maximum Ownership Costs.* The maximum amount reimbursed for ownership costs of equipment, is limited, on a contract basis, to the original purchase price as listed in the Equipment Watch Retail Rental software. The Contractor shall not exchange equipment for a similar item for the purpose of extending the maximum ownership cost. Exchange of equipment for an engineering or mechanical reason shall be approved by the Engineer, or the maximum ownership cost will be limited to that reimbursed for the original piece of equipment. If the ownership cost is limited by the original purchase price, the Contractor will continue to be reimbursed for the operating cost for hours of actual use.

(6) *Backup Equipment.* The Contractor will be reimbursed at 50% of the hourly ownership rate for redundant/backup equipment specifically required, or agreed to by the Department in writing, to be present for specific critical work operations.

(7) *Owner/Operator Equipment.* Equipment Owner/Operators utilized by the Contractor in the performance of work shall be accounted for as a service charge in accordance with Section B.3. *Service Charges.*

d. *Insurance.* The Contractor will be reimbursed for Workers Compensation, Commercial General Liability (CGL), Umbrella or Excess Liability, Special Protective and Highway Liability, Professional Liability/Errors and Omissions, Railroad Protective Liability, Marine Protection and Indemnity, and Pollution Liability insurances at the rate paid by the Contractor, in accordance with the method procured from its insurer(s).

(1) Contractors or Subcontractors that pay insurances based on a percentage of payroll will be reimbursed that percentage of the portion of item Section B.1.a. *Labor* specified in the Contractor's insurance policy.

(2) Contractors or Subcontractors that pay insurances based on of a percentage of gross sales will be reimbursed that percentage of the total of items in Section B.1.a. *Labor*, Section B.1.b. *Materials*, Section B.1.c. *Equipment*, Section B.1.e. *Overhead* and Section B.1.f. *Profit*.

(3) *Workers Compensation Insurance.* The Workers Compensation insurance rate will be the statutory loss cost rate established by the NYS Workers Compensation Insurance Rating Board, with the insurer's approved lost cost multiplier, all assessments and credits, and an experience modifier of 1.00, subject to the Construction Employment Payroll Limitation (CEPL) Program limits where applicable. The Contractor shall submit an insurance policy declaration/rate page from its insurer to validate the Workers Compensation insurance rate.

Where the Longshore and Harbor Workers' Compensation Act, Jones Act, Federal Employees Liability Act or other legal requirements impose additional liability on the Contractor, additional differentials will be added to the Worker's Compensation insurance rate.

For Contractors that obtain Workers Compensation insurance through a pooled fund or similar arrangement, the Contractor shall supply documentation from the Contractor's insurance carrier detailing the rate and basis for application.

The Contractor will be reimbursed for Workers Compensation insurance based on the Workers Compensation insurance rate described above, multiplied by gross wages, not including the premium portion of overtime nor supplemental (fringe) benefits, except when supplemental benefits are paid directly to the employee, up to the CEPL wage limit, where applicable.

e. *Overhead.* The Contractor will be reimbursed for overhead at 10% of items Section B.1.a. *Labor*, Section B.1.b. *Materials* and Section B.1.c. *Equipment*. Overhead will be defined to include the following:

(1) Additional costs for bond(s), Disability Benefits and Commercial Automobile insurance;

(2) All salary, benefits and expenses of executive officers, supervising officers/employees, superintendents, project engineers, office engineers, CPM Schedulers, clerical or administrative employees, and other project level staff, but not including working forepersons; including payroll taxes, unemployment insurance, workers compensation insurance, and charges that are paid by the Contractor to or on behalf of those employees pursuant to written agreement with its employee(s) and/or labor organizations;

(3) Small tools and small tool/equipment supplies, including shovels, picks, axes, saws, bars, sledges, lanterns, etc.;

(4) Contractor's field office rental, utility charges, potable water, sanitation, cleaning, computers, CADD equipment, office equipment, office supplies, reproduction costs, etc.;

(5) Administrative or other efforts required to maintain records and produce force account reports.

f. *Profit.* The Contractor will be reimbursed for profit at 10% of items Section B.1.a. *Labor*, Section B.1.b. *Materials* and Section B.1.c. *Equipment*.

2. Subcontractor Costs. When the work is performed by a Subcontractor, the Contractor will be reimbursed the actual, reasonable and verifiable cost of such subcontracted work as outlined above in Section B.1. *Contractor Costs*, plus an additional 5% for subcontract administration, and the Contractor's costs for insurance in accordance with Section B.1.d *Insurance*.

Specialty Subcontractors are Subcontractors that are experts in a unique trade or are trained to perform very specialized work (i.e., pipe jacking, soil nail walls, fiber wrapping, pile installation, etc.) Only when the Deputy Chief Engineer (Construction) has given advanced approval of projected actual costs, the Department will reimburse the actual, reasonable and verifiable costs for tolls, mileage, lodging, and meals for Specialty Subcontractors required to

perform the work when such costs are deemed necessary due to the Specialty Subcontractor's considerable distance from the location of the work and consideration of alternative Specialty Subcontractors. The reimbursement amount will be the lesser of: (1) the advanced approved actual costs; (2) actual incurred charges; or (3) the current maximum per diem and mileage rates for the contract location within New York State as posted on www.gsa.gov. Specialty Subcontractors shall maintain all records of costs and provide them to the Department upon request. Any extra or unapproved expense to include personal travel or other non-NYSDOT business travel in the official transportation ticket shall be borne by the traveler. This shall include costs as a result of indirect-route or interrupted travel.

3. Service Charges. When work is performed by, and a fee is paid to a professional service, a work service, or an equipment owner/operator, the Contractor will be reimbursed the actual cost of the service fee plus 5% for service administration. This 5% will be applied only once to the service fee regardless of the firm making direct payments.

The rate for equipment with an operator shall not exceed the total of the Blue Book ownership rate, the Blue Book operating rate, and the wages for an appropriate operator. For specialized equipment or circumstances, the wages for an appropriate operator may be up to 150% of the prevailing wage rate.

C. Force Account Report. Payment for force account work will be made based on the following reports. Reports shall be submitted in a format acceptable to the Department. Force Account MURK forms are available from the Department's website at www.dot.ny.gov/main/business-center/contractors/construction-division/forms.

If the Engineer or his/her representative disagrees with the accuracy, applicability, or reasonableness of any portion of a Contractor's submission, he/she will promptly notify the Contractor.

1. Daily Summary. The Contractor shall deliver a daily summary of force account work to the Engineer in a format acceptable to the Department, not later than close of business on the workday following that for which the work is reported. The daily summary shall be dated and signed by the Contractor's authorized representative.

The Engineer's signature indicates that the record, as modified, is contemporaneous and accurate, but does not indicate concurrence with any dispute. The Engineer will annotate the record as necessary, sign and date, and provide a copy to the Contractor.

The summary shall contain:

- a. The contract number, other contract information, and the Contractor name/information.
- b. A brief description of the work performed and the work location for that day.
- c. A list of personnel by name, including the hours worked, and labor classification.
- d. A list of materials used to indicate the quantity and nature. The cost shall be documented later by proper receipts.
- e. A list of equipment used to indicate the number of hours used and the type, manufacturer, model, model year, size of equipment, and any required attachments.

2. Labor Summary. If there is an approved Force Account Estimate, in order to receive progress payments, the Contractor shall deliver to the Engineer a summary of labor used on the work. The Contractor shall provide the Weekly Summary of Force Account Labor using forms provided by the Department, and shall include the first and last name, labor classification, regular and premium hourly rates of pay, supplemental (fringe) benefit hourly rates, regular and premium hours worked, supplemental (fringe) benefit

amounts paid in cash, workers compensation percentage rates and limits, and/or other items necessary to calculate the amount due to the Contractor. Progress payments on the force account will not be made until the Contractor provides required documentation to the Engineer.

3. Force Account Report Submission. On completion of the specific force account work, the Contractor shall deliver to the Engineer a Force Account Report, wherein all labor, materials, equipment, and other charges are shown and totaled using forms provided by the Department. The Force Account Report shall be dated and signed by the Contractor's authorized representative. When the Contractor and the Engineer agree on the Force Account Report, the Engineer will prepare and submit a change order containing the Force Account Report to the Regional Construction Engineer for approval.

4. Force Account Review. The Regional Construction Engineer, or designee, will review the Force Account Report and make any notations, remarks or comments on this form that may assist in final payments. The emphasis of this review will be on labor rates, markups, workers compensation limits, material costs, equipment rates, insurance rates, and overall documentation. The Regional Construction Engineer will forward the change order to the Deputy Chief Engineer, Construction (DCEC). The DCEC, after review and approval, will forward the change order to the Office of the State Comptroller (OSC) for review and filing. Only after filing by OSC may the Engineer begin to process contract payments based on the change order, as the work is completed.

D. Time Related Compensation. The Contractor will only be eligible for extra compensation for expenses or costs which are identified as compensable. In the event any legal action is instituted against the State by the Contractor due to any such dispute for additional compensation, whether due to time related dispute, delay, acceleration, breach of contract, or otherwise, the State's liability will be limited to those items which are specifically identified as compensable under Section D.1. *Recoverable Contractor Costs*. Nothing in this subsection is intended to create any liability of the State not existing at common law or pursuant to the terms of this contract or to prevent the Contractor from filing a claim in the New York State Court of Claims. The remedies contained herein are exclusive.

1. Recoverable Contractor Costs. Only the following elements will be recoverable by the Contractor as "time related compensation" provided they are actual, reasonable and verifiable. Any such adjustment will be made via change order. Escalated costs will include unanticipated higher or lower costs attributable, with appropriate credits, to the performance of work or portions of work in an extended time period due to extenuating circumstances beyond the control of the Contractor.

a. *Extra work.* The Contractor will be reimbursed for extra work required due to a time related dispute in accordance with Section B. *Force Account Work*, less any appropriate credit.

b. *Labor.* The Contractor will be reimbursed for documented escalated labor costs determined in accordance with Section B.1.a. *Labor*.

c. *Materials.* The Contractor will be reimbursed for documented escalated material costs determined in accordance with Section B.1.b. *Materials*.

d. *Equipment.* The Contractor will be reimbursed for documented escalated equipment costs less appropriate credits, determined in accordance with Section

B.1.c. *Equipment*. The costs for idle equipment will be 50% of the ownership rate set forth in Section B.1.c. *Equipment*. Idle time shall not exceed 8 hours per day, 40 hours per week, or the annual usage hours established in the Equipment Watch Cost Recovery software. The Contractor will be reimbursed for backup equipment costs, in accordance with Section B.1.c.(6) *Backup Equipment*. Equipment with an hourly ownership rate of less than \$2 or a current purchase price of less than \$500 will be considered as small tools and equipment and will not be directly reimbursed. No operating costs will be paid for idle equipment.

e. *Insurance*. The Contractor will be reimbursed for documented additional or escalated insurance costs during the extended period.

f. *Extended Contract Site Supervision and Management*. The Contractor will be reimbursed for documented additional or escalated contract site overhead costs during the extended period, including those for superintendents, project engineers, office engineers, CPM schedulers, clerical and other project level staff, but not including working forepersons. Allowable costs will include salary, Standard Labor Markup on salary, benefits not included in the Standard Labor Markup, and workers compensation insurance.

g. *Extended Contractor's Field Office Costs*. The Contractor will be reimbursed for fees paid to service provider(s) during the extended period, for required Contractor's field office rental, utility charges, potable water, sanitation, cleaning, etc.

h. *Bond Costs*. The Contractor will be reimbursed for documented additional or escalated bond costs during the extended period.

i. *Home Office Overhead*. The Contractor will be reimbursed for home office overhead at 10% of items Section D.1.b. *Labor* and Section D.1.c. *Materials*. The Contractor will be reimbursed for home office overhead at 10% of documented escalated equipment costs under Section D.1.d. *Equipment*. No home office overhead will be paid for idle equipment.

j. *Profit*. The Contractor will be reimbursed for profit at 10% of items Section D.1.b. *Labor* and Section D.1.c. *Materials*, except when Suspensions of Work Ordered by the Engineer applies, no profit will be allowed. The Contractor will be reimbursed for profit at 10% of documented escalated equipment costs under Section D.1.d. *Equipment*. No profit will be paid for idle equipment.

2. Recoverable Subcontractor Costs. When costs are recoverable by a Subcontractor as "time related compensation," the Contractor will be reimbursed the actual, reasonable and verifiable subcontractor costs as outlined above in Section D.1., an additional 5% of those costs for subcontract administration, and costs for Contractor insurances in accordance with Section D.1.e. *Insurance*.

3. Non-Recoverable Costs. In any dispute for time related compensation, the Department will have no liability for the following items and the Contractor shall make no claim for the following items:

a. Home office overhead in excess of that provided in Section D.1.i. *Home Office Overhead*;

- b. Profit, in excess of that provided in Section D.1.j. *Profit*;
- c. Loss of anticipated or unanticipated profit;
- d. Labor inefficiencies and loss of productivity;
- e. Consequential damages, including but not limited to interest on monies in dispute, including interest, which is paid on such monies, loss of bonding capacity, bidding opportunities, or interest on investment, or any resultant insolvency;
- f. Indirect costs or expenses of any nature;
- g. Direct or indirect costs attributable to performance of work where the Contractor, because of situations or conditions within its control, has not progressed the work in a satisfactory manner.
- h. Attorney fees and dispute or claims preparation expenses.

E. Acceleration Compensation. The Contractor will be reimbursed for additional costs associated with acceleration directed by the Department in writing.

1. Recoverable Contractor Costs. The following elements will be recoverable by the Contractor as compensation for acceleration, provided they are actual, reasonable and verifiable. Recoverable costs include costs attributable, with appropriate credits, to the performance of work or portions of work during the original contract period, but at an accelerated rate, attributable to the Department's directed acceleration.

- a. *Labor.* The Contractor will be reimbursed for additional labor costs, primarily the premium portion of overtime;
- b. *Materials.* The Contractor will be reimbursed for additional material costs, primarily costs for accelerated production and delivery costs or additional fabrication costs associated with a revised delivery schedule;
- c. *Equipment.* The Contractor will be reimbursed for additional equipment costs, primarily costs for mobilization and demobilization of additional equipment required;
- d. *Insurance.* The Contractor will be reimbursed for additional insurance costs, including Commercial General Liability (CGL), Umbrella or Excess Liability, Special Protective and Highway Liability, Professional Liability/Errors and Omissions, Railroad Protective Liability, Marine Protection and Indemnity, and Pollution Liability insurances required, at the rate paid by the Contractor, in accordance with the method procured from its insurer(s).

(1) Contractors or Subcontractors that pay insurances based on a percentage of payroll will be paid that percentage of the portion of item Section E.1.a. *Labor* specified in the Contractor's insurance policy.

(2) Contractors or Subcontractors that pay insurances based on a percentage of gross sales will be paid that percentage of the total of items in Section E.1.a. *Labor*, Section E.1.b. *Materials*, Section E.1.c. *Equipment*, Section E.1.e. *Overhead*, and Section E.1.f. *Profit*.

- e. *Overhead.* The Contractor will be reimbursed for overhead at 10% of items Section E.1.a. *Labor*, Section E.1.b. *Materials* and Section E.1.c. *Equipment*.

f. *Profit*. The Contractor will be reimbursed for profit at 10% of items Section E.1.a. *Labor*, Section E.1.b. *Materials* and Section E.1.c. *Equipment*.

2. *Recoverable Subcontractor Costs*. When costs are recoverable by a Subcontractor as acceleration compensation, the Contractor will be reimbursed the actual, reasonable and verifiable subcontractor costs as outlined in Section E.1. *Recoverable Contractor Costs*, an additional 5% of those costs for subcontract administration, and the Contractor's costs for insurance in accordance with Section E.1.d *Insurance*.

REQUIRED IN ALL FEDERAL AID CONTRACTS.

CIVIL RIGHTS MONITORING AND REPORTING

The approved civil rights reporting software is *Equitable Business Opportunity Solution* (EBO). The EBO software is a web-based system provided to the Contractor at no cost. The Contractor shall use the approved civil rights reporting software on all contracts. The Contractor shall enter complete and accurate electronic data for each month, not later than the 15th of the following month, using EBO. Data shall be current through the end of the last full payroll week for that month, or as otherwise approved by the Engineer to coordinate with contract payment submittals.

A. Civil Rights Officer(s). The Contractor shall designate a Corporate Civil Rights Officer, a Corporate DBE Representative, and a contract site Equal Employment Opportunity (EEO) Representative; and each Subcontractor shall designate a Corporate Civil Rights Officer, and a contract site Equal Employment Opportunity (EEO) Representative in the approved civil rights reporting software. The designated individuals shall have the responsibility to and shall be capable of effectively administering and promoting an active program of equal employment opportunity and who shall be assigned adequate authority and responsibility to do so. A single individual may fulfill multiple roles. The Contractor shall update the civil rights reporting software within 10 calendar days of any changes in these roles.

B. Workforce Participation Plan. At the pre-construction meeting, the Contractor shall submit an AAP 35 *Workforce Participation Plan* covering the Contractor's workforce and the workforce of its Subcontractors with subcontracts over \$10,000, together and coordinated with the contract progress schedule, that addresses the Equal Employment Opportunity goals.

The Contractor shall not start work until the Department has reviewed and accepted the *Workforce Participation Plan*. The Contractor shall submit a revised plan when a significant work force build-up or reduction will substantially affect goal attainment, or when a revised schedule is requested by the Department. Such revised *Workforce Participation Plan* must be agreed upon by the Department or the original will remain in effect.

C. Equal Employment Opportunity (EEO) Monitoring and Reporting. The Contractor's compliance with the EEO Requirements will be based on its Employment Utilization, affirmative action steps and its good faith efforts to meet the goals.

The Department, in evaluating the Contractor's good faith efforts to meet the EEO goal(s), will first analyze the Contractor's goal attainment on an individual contract. If the Contractor is not meeting the goal(s) for a single trade or contract, the Department will analyze, progressively, the Contractor's goal attainment on all contracts held by the Contractor within the county, the Region, and/or the State. This method of analysis shall be applied primarily but not solely to contracts with small population numbers. Other factors to be considered include, but are not limited to, the location of the contracts, the relative proximity of the contracts to each other, and the nature of the work.

1. Employee Utilization Data. The Contractor shall submit employee utilization data for its workforce and for each Subcontractor with a subcontract exceeding \$10,000 to the Department on a monthly basis, not later than the 15th of the following month. Data shall be submitted showing the total hours for each payroll week, separately through the end of the last full payroll week for that month. A payroll week only partially in a month shall be submitted for the next month. Payroll weeks are determined based on the firm's established payroll end date. Data shall include employee name, gender, ethnicity, and hours worked by trade(s) and classification. Employment utilization percentages are determined using data from the start of work up to and including the month being reported. For the purpose of

determining utilization percentages, the hours of female and minority employment are tabulated separately, and attainment percentages are calculated separately.

2. Federal-Aid Highway Construction Contractors Annual EEO Report. The Contractor shall submit all required employee utilization data to produce a Form FHWA 1391 *Federal-Aid Highway Construction Contractors Annual EEO Report* to the Department annually not later than August 15th, reflecting the work force during all or any part of the last payroll period worked in July, for all ongoing Federal-Aid contracts. The data shall indicate the number of minority men, minority women, non-minority men, and non-minority women employees currently engaged in each trade.

3. Monthly Training Progress Report. When training is required, the Contractor shall submit a monthly training progress report to the Engineer not later than the 15th of each month. In addition to each Monthly Training Progress Report, the Contractor shall provide the Engineer a summary of hours required to complete the various work elements of the training program, hours completed this period, and hours completed to date. This summary shall be provided in sufficient detail to allow the Engineer to determine whether the hours in the previous period are qualified hours under this pay item.

4. Contractor Compliance with EEO Requirements. If the Contractor fails to meet the EEO goal(s) for minorities or women, or demonstrate good faith efforts, the Department may require training of minorities and women to satisfy the employment goals. If the Contractor fails to meet the EEO goal(s), to demonstrate good faith efforts, or is in noncompliance with the nondiscrimination clauses, the Department may suspend additional contract payments, the Contractor may be directed to attend a hearing before the Contract Review Unit, or the Department may follow any other lawful procedure upon due notice in writing to the Contractor, including cancellation, termination, or suspension in whole or in part.

The Contractor may also be referred to the U.S. Department of Labor, Office of Federal Contract Compliance Programs (OFCCP), which has the sole authority to determine compliance with Executive Order 11246 and its implementing regulations. OFCCP may declare the Contractor ineligible for further Federal-Aid contracts in accordance with procedures authorized in Executive Order 11246, and such other sanctions may be imposed, and remedies invoked as provided in Executive Order 11246, or by rule, regulation, or order of the U.S. Secretary of Labor, or as otherwise provided by law.

D. DBE Monitoring and Reporting. The Contractor shall utilize the DBEs committed to at pre-award to perform the work or supply materials for which each is listed. The Engineer will monitor the work to ensure that the identified DBEs perform the work as identified in the Contractor's commitments. Attainments will be measured based on payments made to DBEs.

If the Contractor has not executed a subcontract with a DBE before the DBE is notified of removal of its eligibility by the certifying agency due solely to its having exceeded the size standard, the Contractor may not make commitments to use the firm on the contract as a DBE, and attainments will not be credited toward the contract goal.

If the Contractor has executed a subcontract with a DBE before the DBE is notified of removal of its eligibility by the certifying agency due solely to its having exceeded the size standard, the Contractor may continue to use the DBE on the contract in accordance with the executed subcontract, and attainments will be credited toward the contract goal. Any new or extra work performed by the ineligible DBE not covered under the scope of the original executed subcontract will not be credited toward the contract goal. However, if the DBE/MBE/WBE/SDVOB is decertified because they were acquired by or merged with another firm that is not certified (i.e., Non-DBE/MBE/WBE/SDVOB), the portion of work that was

performed after the firm was decertified will not count towards the goal, even if the Contractor has executed a subcontract with the decertified firm. If the loss of credit towards the goal affects the Prime Contractor's ability to meet the overall contract goal, the Contractor shall make up for the shortfall or provide sufficient Good Faith Effort documentation.

When a contract is awarded with DBE commitment(s) that is less than the contract goal(s), the Contractor shall continue good faith efforts. The Contractor shall periodically review items that are available for DBE participation, typically before the beginning of a new construction season and when significant new items of work are added to the contract and conduct additional DBE solicitation.

If a Contractor, in order to meet the DBE contract goal or other DBE program requirements, uses or attempts to use, on the basis of false, fraudulent or deceitful statements or representations or under circumstances indicating a serious lack of business integrity or honesty, a DBE that does meet the eligibility criteria of 49 CFR Subpart D, the U.S. Department of Transportation may initiate suspension or debarment proceedings against that firm under 2 CFR Parts 180 and 1200.

1. Report of Payments to Subcontractors and DBEs. The Contractor shall enter payment data into EBO for all Subcontractors and for all DBEs that are due a payment or have received a payment, within 14 days of receipt of payment from the Department, in order to measure DBE goal attainment and to monitor Contractor compliance.

The Subcontractor or DBE shall acknowledge receipt of payment not later than 7 calendar days after receipt. The date of receipt is: (1) the date the payment was made by electronic transfer to an account identified and agreed to by both parties; (2) the date the envelope containing the payment was date stamped by the U.S. Postal Service; or (3) the date the payment was physically provided to a previously authorized representative of the Subcontractor or DBE, either by the Contractor or by a delivery service.

The Contractor shall enter the final payment to each Subcontractor or DBE and designate it as such when the final payment is made, or as a separate \$0.00 entry indicating final payment has been made, prior to contract final acceptance, excepting those payments due from work contained in a change order(s) that have not been approved. The Subcontractor or DBE shall acknowledge receipt of final payment not later than 7 calendar days after receipt or by notification by the Contractor that a separate \$0.00 entry indicating final payment was entered in the civil rights reporting software.

2. Monitoring Commercially Useful Function (CUF) by DBEs. The Contractor shall monitor the work of the DBEs to ensure each performs a Commercially Useful Function and can be properly counted towards the Contractor's DBE commitments.

The Department will review the work, services or products provided by each DBE to verify the performance of a Commercially Useful Function. To determine whether a DBE has performed a Commercially Useful Function, the Department may also examine similar transactions, particularly those in which DBEs do not participate.

If the Department determines that some or all of a DBEs work does not constitute a commercially useful function only the portion of the work considered to be a commercially useful function will be credited toward the goal(s).

Upon request, each DBE Subcontractor shall provide additional documentation to the Engineer for the purposes of monitoring Commercially Useful Function. Such documentation may include, but not be limited to: confirmation that the workforce provided meets the requirements; a copy of purchase order(s) for all material incorporated into the work; and a copy of a rental agreement for all non-owned equipment used to perform the work to the Engineer.

Upon request, the Contractor shall provide a copy of a purchase order(s) for all material, supplies, articles, or equipment provided by a DBE Manufacturer, Fabricator, or Material Supplier and a copy of a purchase order(s) that details the work product(s) provided from each DBE Professional Service to the Engineer.

A DBE may present evidence to rebut a determination by the Department that the DBE is not performing a commercially useful function. For DBEs, commercially useful function determinations by the Department are subject to review by the Federal Highway Administration (FHWA) but the determination may not be administratively appealed to USDOT.

3. Revisions to DBE Participation. The Contractor shall obtain Department approval for substantial revisions, as defined below, in DBE participation prior to implementing any proposed change through submission of Form AAP16 *Request to Modify DBE/MBE/WBE/SDVOB Participation*. Once approval is granted by the Department, the Contractor shall submit a revised AAP19 *DBE Schedule of Participation* using the Department approved civil rights reporting software. Unless approval for the revision is granted, Contractor will not be entitled to any payment for work or material committed to a DBE unless it is performed or supplied by the approved DBE.

If the reduction of the DBE's work or the removal of the DBE, including for reasons of commercially useful function violations, causes the DBE participation to fall below the goal(s), the Contractor shall make good faith efforts to find another DBE to substitute for the original DBE to perform at least the remaining amount of work as the DBE that was terminated, to the extent needed to meet the contract goal(s).

Upon request, the Contractor shall provide documentation of good faith efforts within 7 days, which may be extended for an additional 7 days if necessary, at the request of the Contractor. The Department will provide a written determination to the Contractor stating whether or not good faith efforts have been demonstrated.

A DBE may be substituted if the work committed to the DBE is deleted or reduced by the Department and enough work remains to substitute an equal commitment amount to the affected DBE. If not enough work remains, the Department may relieve the Contractor from attaining that portion of the commitments.

The following modifications will be considered a substantial revision in DBE participation:

- Adding, removing or substituting a DBE.
- Adding new item(s) of work to a DBE within a core (3 digit) contract pay-item number not currently approved.
- Reducing the dollar value of or eliminating the DBE's item(s) of work or a portion of the work.
- Changes in participation due to major differences between estimated quantities and actual work performed.

The following modifications will not be considered a substantial revision in DBE participation:

- Increasing the dollar value of an item(s) of work or adding new item(s) of work within the same core (3 digit) contract pay-item number to a DBE.
- Substituting similar dollar values of work within a currently approved core (3 digit) contract pay-item number.
- Changes in participation due to minor differences between estimated quantities and actual work performed.

In accordance with 49 CFR 26.53(f)(1), the Contractor shall not terminate a DBE listed on the approved DBE Participation Plan without the prior written consent of the

Department. This includes, but is not limited to, instances in which a contractor seeks to perform work originally designated for a DBE subcontractor with its own forces or those of an affiliate, a non-DBE firm, or with another DBE firm.

The Department will consent only if the Prime Contractor has good cause to terminate the DBE firm. Good cause includes, at a minimum, one the following circumstances:

- The listed DBE fails or refuses to execute a written contract:
- The listed DBE fails or refuses to perform the work of its subcontract in a way consistent with normal industry standards. Provided, however, that good cause does not exist if the failure or refusal of the DBE subcontractor to perform its work on the subcontract results from the bad faith or discriminatory action of the Contractor:
- The listed DBE fails or refuses to meet the Contractor's reasonable, nondiscriminatory bond requirements:
- The listed DBE becomes bankrupt, insolvent, or exhibits credit unworthiness:
- The listed DBE is ineligible to work on public works projects because of suspension and debarment proceedings pursuant 2 CFR Parts 180, 215 and 1200 or applicable state law;
- The Department has determined that the listed DBE is not a responsible contractor,
- The listed DBE voluntarily withdraws from the project and provides to the Department written notice of its withdrawal;
- The listed DBE is ineligible to receive credit for the type of work required;
- A DBE owner dies or becomes disabled with the result that the firm is unable to complete its work on the contract;
- Other documented good cause that you determine compels the termination of the DBE. Provided, that good cause does not exist if the Contractor seeks to terminate a DBE it relied upon to obtain the contract so that the Contractor can self-perform the work for which the DBE was engaged or so that the Contractor can substitute another DBE or non-DBE contractor after contract award.

Before submitting its request to terminate and/or substitute a DBE to the Department, the Contractor shall give notice in writing to the DBE subcontractor, with a copy to the Engineer, of its intent to request to terminate and/or substitute, and the reason for the request.

The Contractor shall give the DBE five days to respond to the notice and advise the Department and the Contractor of the reasons, if any, why the DBE objects to the proposed termination of its subcontract and why the Department should not approve the Contractor's action. If required in a particular case as a matter of public necessity (e.g., safety), the Department may approve a response period shorter than five days.

Failure of a Contractor to obtain Department approval prior to reduction, termination or substitution of a DBE may be deemed a breach of contract subject to appropriate actions such as, but not limited to, a responsibility review, withholding contract payments, and/or loss of credit towards the DBE goals.

4. Contractor's Compliance with DBE Program Requirements. If the Contractor fails to meet the DBE participation commitment(s), to exert a good faith effort, or otherwise fails to comply with the DBE Program requirements, the Department will take appropriate actions. Such actions may include, but not be limited to: suspension of contract payments; direction to the Contractor to attend a hearing before the Department's Contract Review Unit; or any

other lawful procedure upon due notice in writing to the Contractor, including cancellation, termination, or suspension in whole or in part of the contract agreement.

Where the Department determines that the Contractor is not in compliance with the requirements of the contract and the Contractor refuses to comply with such requirements, or if the Contractor is found to have willfully and intentionally failed to comply with the DBE participation goal, the Contractor will be obligated to pay to the Department Liquidated Damages.

Such Liquidated Damages for failure to meet the DBE requirements shall be calculated as an amount equaling the difference between the amount committed to the DBEs by the Contractor at award and the amount actually paid to the DBEs for work performed or materials supplied under the Contract, not including any amount for work deleted by the Department or work which a DBE declined or failed to reasonably perform.

If a determination has been made which requires the payment of Liquidated Damages and such identified sums have not been withheld by the Department, the Contractor shall pay such Liquidated Damages to the Department within sixty (60) days after they are assessed.

The Contractor may also be referred to the USDOT for possible suspension or debarment as provided in 49 CFR 26 and such other sanctions as may be imposed and remedies invoked as provided under the authority of 49 CFR 26, or by rule, regulation, or order of the Commissioner or as otherwise provided by law.

E. Compliance Reviews. The Department conducts annual civil rights contract compliance reviews of selected Federal-Aid contracts in accordance with 23 CFR 230.409. A compliance review consists of a thorough review of all civil rights contract requirements, including Nondiscrimination in Labor/Employment, EEO, Training, and DBE requirements. A Contractor will typically not be selected for more than one compliance review per year statewide. Based on contract monitoring and/or the results of compliance review(s), the Department may conduct a review of some or all ongoing contracts with a single Contractor, regardless of funding source.

REQUIRED IN ALL FEDERAL AID CONTRACTS.

MATERIAL ACCEPTANCE RECORDS.

Whenever any specification provides for Approved List, Material Certification or Manufacturer's Certifications as a Basis of Acceptance, the Department reserves the right to sample and/or test any material prior to incorporation in the work. Approved List shall mean the list which is current on the date of incorporation of material into the work. The Contractor may request reimbursement from the Department for additional costs for materials that were purchased after contract award and prior to the product being removed from the Approved list but are removed from the Approved list after contract award.

Some specifications reference a Manufacturer's Certification or a Material Certification as evidence of acceptability of specific materials or products. A Manufacturer's Certification can only be properly executed by the Manufacturer or Producer of the material or product. When manufactured products are subsequently modified by another party such as a Fabricator or provided by a Material Supplier other than the Manufacturer, an additional Material Certification from each party that modifies or takes ownership of the product prior to the installation of the material shall be provided in addition to all of the previous certifications.

A. Material Certification. When products are supplied by a Manufacturer, Producer, Fabricator, or Material Supplier, a Material Certification that includes the essential components outlined below shall be provided to the Engineer.

1. Identification of Manufacturer or Producer. Name of the company and address of its manufacturing or producing facility.

2. Identification of Material or Product. Generic name of the material or product and the corresponding Section 700 Materials and Manufacturing material code.

3. Identification of Shipment. Sufficient detail to describe the quantity contained in the shipment, the contract number and a date of shipment. A Material Supplier's Certification shall clearly indicate that the shipment is all or a portion of the quantity detailed on the accompanying Manufacturer's Certification.

4. Statement of Conformance. The certification shall definitively state that the material contained in the shipment meets the requirements of a specific Department specification or a specific specification or standard of another agency (i.e., ASTM, AASHTO, AWWA, etc.).

If the material in the shipment contains steel and/or iron, the certification shall definitively state that the material is or is not of domestic origin. Acceptable statement is: "Conforms (or Does not conform) to the requirements of 23 CFR 635.410 Buy America Requirements."

If the product supplied has been altered subsequent to the certification by the manufacturer, the Material Certification shall definitively state that the material or product contained in the shipment meets the requirements of an identified contract specification.

5. Certification Execution. The certification shall be signed by a person authorized to legally bind the company, as indicated by statement or title/position. Notarization of the signature is not required.

REQUIRED IN ALL FEDERAL AID CONSTRUCTION CONTRACTS.

Appendix 12-2.40

BUY AMERICA REQUIREMENTS

In accordance with 23 USC 313, 23 CFR 635.410, and the Build America Buy America (BABA) Act in Title IX of the Bipartisan Infrastructure Law's (BIL), permanently incorporated predominantly steel and/or iron materials, manufactured products, and construction materials shall be domestically produced.

A. Control of Materials.

To qualify as domestic, all manufacturing processes, including melting, manufacturing, fabricating, grinding, drilling, welding, finishing, and coating of any product containing steel and/or iron materials, must have been performed in the United States. A domestic product is a manufactured steel and/or iron material/product and/or construction material that was produced in one of the 50 States, the District of Columbia, or in the territories and possessions of the United States. Raw materials used in the steel and/or iron materials may be imported. Raw materials are materials such as raw iron ore, and waste products which are used in the manufacturing process to produce the steel and/or iron material/product. The FHWA has granted a nationwide waiver for pig iron and processed, pelletized, and reduced iron ore. Waste products include scrap (i.e., steel no longer useful in its present form from old automobiles, machinery, pipe, railroad rail, steel trimmings from mills or product manufacturing). Extracting, crushing, and handling the raw materials which are customary to prepare them for transporting are exempt from Buy America. The use of foreign source steel billets or iron ingots are not acceptable under Buy America. All items, regardless of origin, shall comply with their individual specification requirements and with the requirements stated elsewhere in this subsection. The Contractor shall ensure the domestic steel and/or iron materials are supplied in conformance with the above referenced laws.

The Buy America provisions only applies to articles, materials, and supplies that are consumed in, incorporated into, or affixed to an infrastructure project. As such, it does not apply to tools, equipment, and supplies brought to the construction site and removed at or before the completion of the infrastructure project, such as temporary scaffolding. In addition, it does not apply to equipment and furnishings, such as movable chairs, desks, and portable computer equipment, that are used at or within the finished infrastructure project but are not an integral part of or permanently affixed to the structure.

Federal-Aid Contracts

For Federal-Aid contracts, all iron and steel, manufactured products, and construction materials incorporated into the contract shall be produced/manufactured in the United States as follows:

- a. All iron and steel used in the project shall be produced in the United States. This means all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.
- b. All manufactured products used in the project shall be produced in the United States. This means the manufactured product was manufactured in the United States, and the cost of the components of the manufactured product that are mined, produced, or manufactured in the United States is greater than 55 percent of the total cost of all components of the manufactured product. Manufactured products mean articles, materials, or supplies that have been: (i) processed into a specific form or shape; or (ii) combined with other articles, materials, or supplies to create a product with different properties than the individual articles, materials, or supplies.
- c. All construction materials shall be manufactured in the United States. This means that all manufacturing processes for the construction material occurred in the United States. Construction materials includes an article, material, or supply that is or

consists primarily of:

- **Non-ferrous metals:** All manufacturing processes means initial smelting or melting through final shaping, coating and assembly occurred in United States;
- **Plastic and polymer-based products (including polyvinylchloride, composite building materials, and polymers used in fiber optic cables):** All manufactured processes, from initial combination of constituent plastic or polymer-based inputs, or, where applicable, constituent composite materials, until the item is in its final form, occurred in the United States;
- **Glass (including optic glass):** All manufacturing processes, from initial batching and melting of raw materials through annealing, cooling, and cutting, occurred in the United States;
- **Fiber optic cable (including drop cable):** All manufacturing processes, from the ribboning (if applicable), through buffering, fiber stranding and jacketing, occurred in the United States. All manufacturing processes also include the standards for glass and optical fiber, but not for nonferrous metals, plastic and polymer-based products, or any others;
- **Optical fiber:** All manufacturing processes, from initial preform fabrication stage through the completion of the draw, occurred in the United States;
- **Lumber:** All manufacturing processes, from initial debarking through treatment and planing, occurred in the United States;
- **Engineered wood:** All manufacturing processes, from initial combination of constituent materials until the wood product is in its final form, occurred in the United States; or
- **Drywall:** All manufacturing processes, from initial blending of mined or synthetic gypsum plaster and additives through cutting and drying of sandwiched panels, occurred in the United States.

Minor additions of articles, materials, supplies or binding agents to a construction material do not change the categorization of the construction material. Items that consist of two or more of the listed materials that have been combined together through a manufacturing process, and items that include at least one of the listed materials combined with a material that is not listed through a manufacturing process, should be treated as manufactured products, rather than construction materials.

Construction materials do not include an item of primary iron or steel; a manufactured product; or Section 709179(c) materials. 709179(c) materials include cement or cementitious materials; aggregates such as stone, sand, or gravel; or aggregate binding agents or additives).

An article, material, or supply should be classified into only one of the following categories: (1) iron or steel; (2) a manufactured product; (3) a construction material; or (4) Section 70917(c) materials. An article, material, or supply should not be considered to fall into multiple categories. In some cases, an article, material, or supply may not fall under any of the categories listed. The classification of an article, material, or supply falling into one of the four categories must be made based on its status at the time it is brought to the work site for incorporation into the project.

For Federal-Aid Contracts, FHWA allows the Contractor to permanently incorporate in the construction of the contract a minimal amount of foreign steel and/or iron materials, if the

Appendix 12-2.42

combined cost of such materials does not exceed one-tenth of one percent (0.1%) of the total contract cost or \$2,500, whichever is greater. The combined cost of foreign steel and/or iron materials will be the value of the materials as they are delivered to the contract, documented by invoice or bill of sale to the Contractor.

For Federal-Aid Contracts, USDOT's Waiver of Buy America Requirements for De Minimis Costs and Small Grants allows the Contractor to permanently incorporate in the construction of a contract (under a single financial assistance award) a minimal amount of foreign manufactured products and construction materials, if the total value of the non-compliant products/materials is no more than the lesser of \$1,000,000 or 5% of total applicable costs for the project. This does not apply to iron and steel subject to the requirements of 23 U.S.C. 313 on financial assistance administered by FHWA. The de minimis threshold in 23 CFR 635.410(b)(4), and stated above, continues to apply for steel and iron. The "total applicable costs for the project" are defined as the cost of materials (i.e., steel/iron, manufactured products, and construction materials) used in the project that are subject to Buy America, including materials that are within the scope of an existing waiver. Based on USDOT's waiver, if the total amount of federal financial assistance applied to the project, through awards or subawards, is below \$500,000, then Buy America does not apply.

B. Waivers.

Federal-Aid Contracts.

The Contractor may request a waiver if it can be demonstrated that:

- a. Applying a Buy America preference would be inconsistent with the public interest (a "public interest waiver");
- b. Types of iron, steel, manufactured products, or construction materials are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality (a "nonavailability waiver"); or
- c. The inclusion of iron, steel, manufactured products, or construction materials produced in the United States will increase the cost of the overall project by more than 25 percent (an "unreasonable cost waiver").

The Contractor shall submit a waiver request to the Engineer which includes a detailed justification for the use of goods, products, or materials mined, produced, or manufactured outside the United States and including copies of all documentation verifying the unavailability of the material or product.

The Department will submit approved waiver requests to the FHWA for review. The Contractor shall investigate and respond to any public comments made to the FHWA Office of Program Administration, indicating that a domestic supplier can provide the material for which a waiver has been requested. Final approval of the Buy America Waiver request will be made by the Administrator, Federal Highway Administration. The waiver will be effective when it is posted in the Federal Register.

C. Certifications.

A Manufacturer's Certification is required to certify that the material/product is of domestic origin. Acceptable statements are: "Conforms (or Does not conform) to the requirements of NYSDOT Standard Specifications §106-11 *Buy America*" (acceptable for steel/iron, manufactured products and construction materials) or "Conforms (or Does not conform) to the requirements of 23 CFR 635.410 *Buy America Requirements*" (acceptable for steel/iron and manufactured products only) or "Conforms (or Does not conform) to the requirements of the Build America, Buy America Act" (acceptable for construction materials only). Certifications shall comply with *Material Acceptance Records*.

REQUIRED IN ALL FEDERAL AID CONTRACTS.

USE OF UNITED STATES-FLAG VESSELS

In accordance with the Cargo Preference Act and 46 CFR 381, the requirements below apply to material, equipment, or commodities that are acquired for a specific Federal-aid construction contract and transported on ocean vessels (or transported across the Great Lakes). The requirements are not applicable to goods or materials that come into inventories independent of a specific Federal-aid construction contract.

A. The Contractor shall 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 the contract, to the extent such vessels are available at fair and reasonable rates for United States-flag commercial vessels.

B. The Contractor shall 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 A 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. The Contractor shall insert the substance of the provisions of this section in all subcontracts issued pursuant to the contract.

REQUIRED IN ALL FEDERAL AID CONTRACTS.

Appendix 12-2.44

LPM

**CHAPTER 12,
APPENDIX 12-4**

**PUBLIC INTEREST
FINDING, INSTRUCTIONS
AND SAMPLE LETTER**

CONTENTS

Appendix 12-4	Page Number
PUBLIC INFORMATION FINDING (PIF) FORM	3
INSTRUCTIONS TO COMPLETE THE PIF FORM	6
EXAMPLE REQUEST LETTER BY SPONSOR TRANSMITTING PIF TO RLPL	8

Public Information Finding (PIF)
Appendix 12-4

(09/2021)

PIN:	Sponsor:	Date:
-------------	-----------------	--------------

Project:

In accordance with Title 23 CFR 635.104(b), the following information and justification to show why “no-bid force account work” is necessary and request approval to progress the federally funded project with municipal forces.

PROJECT INFORMATION:

Project Description: *[Provide a detailed description of the project, including the exact location and what transportation systems it may connect (e.g., sidewalk system).]*

Proposed Construction: *[Provide a detailed description of the proposed construction work activities, including any scheduling or environmental issue that may be encountered, to be completed by Municipal Forces.]*

NEPA Category: CE EA EIS NEPA Approval Date: _____ On NHS: Y N

EE: \$ _____ Municipal Forces Cost: \$ _____ Savings: \$ _____ (____%)

Municipal Forces are expected to complete this work by: _____
(Construction Season of 2021)

MUNICIPAL FORCES QUALIFICATIONS:

Equipment: *(List equipment to be used for this project.)*

Available:	Used For:

Public Information Finding (PIF)
 Appendix 12-4

(09/2021)

PIN:	Sponsor:	Date:
-------------	-----------------	--------------

Project:

Reviewer Comments:

NYSDOT's approval of your request is based on the following factors:

1. That it is more cost-effective for your Municipal Forces to perform the construction work of this project compared to the competitive bidding process,
2. That the Sponsor has adequate resources – equipment, staff, and historical experience required to complete the project,
3. The Sponsor, based on existing laws, has the legal right to progress the construction work.

Approvals:

	Name	Signature	Date
Sponsor			
RLPL (NYSDOT)			
FHWA *			

FHWA approval is required for projects **on the NHS System.*

Public Information Finding (PIF)
Appendix 12-4

Page 1 of 2

Directions for the completion of the Public Information Finding (PIF)

Step 1 – Sponsor completes the PIF form:

This form will work best if the Sponsor completes it electronically. Within the header, indicate the PIN, Sponsor, Date, and one-line Project Description. This will then repeat on subsequent pages.

Project Information:

Project Description: Provide a detailed description of the project, including the exact location and what transportation systems the project may connect to. For example, *The project will replace a failing 5-foot diameter corrugated metal pipe with a 50-year life cycle structure using cost-effective and long-life components to minimize the life cycle cost and maintenance and repair. The project will also address geometric deficiencies to improve traffic flow, facilitate traffic operations, and correct identified pavement deficiencies with low-life cycle cost-effective pavement treatments that will extend the useful life of the highway.*

Proposed Construction: Provide a detailed description of the proposed construction work activities, including any scheduling or environmental issues that may be encountered, to be completed by the municipal forces. For example, *The proposed construction work consists of the replacement of an existing failed culvert with a concrete box culvert and associated roadway approach work and improvements.*

NEPA Category: Check the NEPA category.

NEPA Approval Date: Provide the date of most current NEPA Approval.

On NHS: Indicate whether the project is on the National Highway System.

EE: Provide the project design engineer's estimate. Provide a copy of the engineer's estimate as an attachment to the PIF form.

Municipal Forces Cost: Provide the municipal forces' construction total cost estimate. Attach the detailed estimate to the PIF form.

Savings: A comparison of municipal forces' construction cost estimate to the project design engineer's estimate indicates the cost and percentage of savings.

Expected Completion of work: Indicate the construction season in which it is expected that the municipal forces will complete the work.

Municipal Forces Qualifications:

Equipment: List equipment available for use on the project and what it would be used for.

Staff Experience: List those individuals' name(s), title(s), and years of relevant experience who will be completing the proposed work.

Sponsor's History: List relevant projects, including a description of the type of work and when the municipal forces completed the work.

Approvals: The Sponsor signs and dates the PIF prior to submitting it to the Regional Local Project Liaison (RLPL) for review.

Public Information Finding (PIF)
Appendix 12-4

Page 2 of 2

Directions for the completion of the Public Information Finding (PIF)

Step 2: Sponsor completes the Request to Apply Municipal Forces for Construction letter to the Regional Local Project Liaison (RLPL) on Sponsor's letterhead. The letter and the attached documentation, Public Information Finding form, design engineer's estimate, and municipal forces estimates are forwarded to the RLPL.

Step 3: If the project is on the NHS, the RLPL will forward the provided request to FHWA for approval.

OR

Step 3: If the project is not on the NHS, the RLPL will review the provided documentation and inquire with the sponsor for any additional information.

Reviewer Comments: The RLPL provides comments as applicable.

Step 4: Upon approval, the RLPL signs the PIF, retains a copy for the project files, and returns the form to the Sponsor to be maintained in the project files.

Appendix 12-4

SPONSOR'S REQUEST TO APPLY MUNICIPAL FORCES FOR CONSTRUCTION

(Sponsor's Letterhead)

[DATE]

[RLPL NAME]
[RLPL ADDRESS]

RE: REQUEST FOR MUNICIPAL FORCES TO COMPLETE CONSTRUCTION
[PIN]
[PROJECT NAME]

Dear [RLPL Name]:

In accordance with Title 23 CFR 635.104(b), the [Sponsor] is requesting approval to progress the referenced project with municipal forces. We are providing the attached Public Information Finding (PIF) form outlining why "no-bid force account work" is necessary.

Additional documentation and justification are attached to the PIF for your review.

Your attention to this request is appreciated. If any additional information is needed, please contact [name and contact information of municipal project manager].

Sincerely,

[Name]
[Title]

cc:
Attachments:
PIF
Design Engineer's Estimate
Sponsor Workforce Estimate

**New York State
Department of Transportation
Local Projects Manual**

**Chapter 13
Civil Rights Requirements**



TABLE OF CONTENTS

TABLE OF CONTENTS..... 2

Acronyms 4

NOTE 4

13.1 INTRODUCTION..... 5

13.2 TITLE VI OF THE CIVIL RIGHTS ACT OF 1964 5

13.2.1 Sponsor’s Title VI Requirements 6

13.2.1.1 Sponsor’s Title VI Assurance 7

13.2.1.2 Sponsor’s Nondiscrimination Policy Statement..... 7

13.2.1.3 Sponsor’s Title VI Plan..... 7

13.2.1.4 Monitoring and Review Process 7

13.2.1.5 Data Collection and Analysis..... 8

13.3 LIMITED ENGLISH PROFICIENCY (LEP)..... 8

13.4 THE REHABILITATION ACT OF 1973 AND THE AMERICANS WITH DISABILITIES ACT (ADA) 9

13.4.1 Nondiscrimination..... 10

13.4.2 Self-Evaluation 10

13.4.3 ADA Transition Plan 10

13.4.4 Design and Construction..... 11

13.5 EQUAL EMPLOYMENT OPPORTUNITY (EEO) 13

13.6 APPRENTICESHIP AND TRAINING PROGRAMS 13

13.7 DISADVANTAGED BUSINESS ENTERPRISE (DBE) PARTICIPATION . 14

13.7.1 DBE Contract Requirements / Establishing DBE Goals 14

13.7.1.1 Consultant and Professional Services 14

13.7.1.1.1 Architectural & Engineering (A&E) Consultant Contracts 14

13.7.1.1.2 Non-Architectural & Engineering (Non-A&E) Consultant Contracts 14

13.7.1.2 Construction Contracts 15

13.7.2 DBE Goal Assessment Process 15

13.7.3 DBE Goal and Good Faith Efforts (GFE) Documentation 15

13.7.4 NYS Executive Order 162 Ensuring Pay Equity..... 16

13.8 PROMPT PAYMENT 16

13.9 FEDERAL REPORTING REQUIREMENTS 16

13.10 CONTRACT COMPLIANCE REVIEWS 16

13.11 FINAL REPORTS—CONTRACT CLOSE-OUT 17

13.12 CIVIL RIGHTS REQUIREMENTS ON STATE-FUNDED (NON-FEDERAL AID) PROJECTS..... 17

 13.12.1 Minority and Women-Owned Business Enterprises (M/WBE) Program and Service-Disabled Veteran-Owned Business (SDVOB) Program 17

13.13 NON-COMPLIANCE WITH CIVIL RIGHTS REQUIREMENTS 17

13.14 REFERENCES, CHAPTER 13.0 CIVIL RIGHTS REQUIREMENTS 18

Acronyms

ADA	Americans with Disabilities Act	LPM	Local Projects Manual
ADP	Advance Detail Plans	MBE	Minority Business Enterprise
A&E	Architectural & Engineering	M/WBE	Minority and Woman Business Enterprise
CAM	Construction Administration Manual	NYSDOL	New York State Department of Labor
CFR	Code of Federal Regulations	NYSUCP	New York State Unified Certification Program
DBE	Disadvantaged Business Enterprise	NYSDOT	New York State Department of Transportation
EBO	Equitable Business Opportunities	ODO	New York State Department of Transportation Office of Diversity and Opportunity
EEO	Equal Employment Opportunity	RLO	Responsible Local Official
EI	Engineering Instruction	RLPL	Regional Local Project Liaison
EO	Executive Order	SDVOB	Service-Disabled Veteran-Owned Business
FHWA	Federal Highway Administration	USDOJ	United States Department of Justice
GFE	Good Faith Effort	USDOL	United States Department of Labor
HDM	Highway Design Manual	USDOT	United States Department of Transportation
LEP	Limited English Proficiency	WBE	Woman- Business Enterprise

NOTE

This chapter has associated appendices and forms at: <https://www.dot.ny.gov/plafap>

The links for the words **highlighted** throughout this chapter (except LPM chapter references) can be found at the end of this chapter in **Section 13.15 References**.

13.1 INTRODUCTION

This chapter provides an overview of federal and state Civil Rights laws, rules, regulations, and presidential and gubernatorial executive orders (EO) for locally administered transportation projects. The New York State Department of Transportation (NYSDOT) policy ensures equal opportunity and prevents discrimination in all its activities. NYSDOT and project sponsors (denoted as “Sponsor[s]” hereafter) share this compliance responsibility in meeting federal and state Civil Rights law requirements on locally administered transportation projects. Various chapters within the Local Projects Manual (LPM), as well as NYSDOT’s Standard Specifications, NYSDOT’s Manual of Uniform Recordkeeping (MURK) Part 1A Construction Administration Manual (CAM), and the Highway Design Manual (HDM) provide additional Civil Rights functional guidance.

13.2 TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

Title VI of the Civil Rights Act of 1964 and related nondiscrimination statutes require recipients¹, including the NYSDOT, of federal financial assistance to ensure that no one is excluded from participation in, denied the benefits of, or subjected to discrimination based on race, color, or national origin in any federally assisted program and activity.

Per **23 CFR 200.9**², Sponsors that receive Federal Highway Administration (FHWA) funds through NYSDOT must have a Title VI Program subject to review and approval by NYSDOT. The Title VI Program’s purpose is to prohibit discrimination and ensure nondiscrimination through policies, procedures, benefits and services, and regular program reviews. In addition, the Title VI Program requires Sponsors to specify how they will implement their Title VI responsibilities.

NYSDOT is required to perform formal annual compliance reviews of Sponsors receiving federal funds. Sponsors will be required to document their Title VI compliance through a NYSDOT audit review that includes an evaluation of how they administer their overall Title VI Program throughout all program areas.

Sponsors must summarize their efforts regarding how they monitor nondiscrimination in programs and activities that impact the public. The program areas include, but are not limited to:

- Planning
- Environment
- Project Development (Design)
- Right-of-Way

¹ The term recipient is used to refer to an entity or entities that directly receive federal financial assistance from the United States Department of Transportation (USDOT) through the Federal Highway Administration (FHWA).

² The term subrecipient is used to refer to an entity or entities that indirectly receive federal financial assistance from the USDOT through the FHWA. For consistency throughout this Manual, the term Sponsor(s) will be used to refer to subrecipient(s).

- Construction
- Maintenance
- Traffic Safety
- Research
- On-the-Job Training Programs

Sponsors have the option of:

- Adopting by a resolution [Appendices 13-1 through 13-4](#) of a [Title VI Plan](#) and applicable procedures, or
- Developing their own Title VI Plan with approval from [NYSDOT's Office of Diversity and Opportunity \(ODO\)](#).

Title VI prohibits discrimination on the basis of race, color, and national origin in programs and activities receiving federal financial assistance.

13.2.1 Sponsor's Title VI Requirements

A Sponsor's Title VI Plan must have policies and procedures in place to ensure Title VI compliance. These policies include:

- Title VI Assurances (signed and dated),
- Nondiscrimination Policy Statement (signed and dated),
- Title VI Plan (signed and dated) that includes Limited English Proficiency (LEP) Plan,
- Americans with Disabilities Act (ADA) Transition Plan,
- Monitoring/Review Process, Data Collection, and Analysis of participants,
- Designated Title VI Coordinator and an outline of their responsibilities,
- Complaint Form, with applicable processes, procedures, and issue resolution process,
- Public Involvement Plan that includes Public Dissemination of Title VI Information, and
- Schedule of Title VI Training (with recorded dates and target audience).

The Sponsor's overall Title VI Plan ([Appendices 13-1 through 13-4](#)) must include all of the above areas. Each area must be addressed in its entirety.

Fillable forms for all required policies and procedures can be found on NYSDOT website.

13.2.1.1 Sponsor's Title VI Assurance

The Sponsor's Responsible Local Official (RLO) or designee must have a signed and dated Title VI Assurance in place. The Sponsor must ensure that all programs, policies, procedures, activities, services, and facilities are implemented and operated in a nondiscriminatory manner. Title VI Assurance is a shared responsibility for all involved in delivering federal and state-funded projects.

13.2.1.2 Sponsor's Nondiscrimination Policy Statement

The Sponsor must maintain a current Title VI/Nondiscrimination Policy Statement. The Statement must inform the public of the Sponsor's commitment to nondiscrimination in all programs and activities to the effect that no person shall on the grounds of race, color, national origin, sex, age, disability, or low-income status, or limited-English proficiency be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination or retaliation under any program or activity administered by the Sponsor or the Sponsor's contractors/subcontractors whether it is federally assisted or not. The policy statement must be signed and dated by the RLO or designee. The Statement must include the following provisions:

- A commitment to the nondiscrimination provisions of Title VI,
- Disseminate Title VI information to the general public and publish where appropriate,
- Ensure Title VI provisions are in all contracts and subcontracts with subcontractors,
- Participate in training offered on Title VI and other nondiscrimination requirements,
- Extend subcontracting opportunities to Disadvantaged Business Enterprises (DBEs),
- Maintain current and accurate records that demonstrate and document Title VI compliance, including collecting racial and ethnic data on persons impacted,
- Appoint a Title VI/Nondiscrimination Coordinator with direct access to the RLO, and
- Develop a complaint process and take affirmative action to correct any deficiencies within a reasonable time.

13.2.1.3 Sponsor's Title VI Plan

Sponsors must develop and maintain a Title VI Plan that documents procedures for complying with Title VI Program requirements. Sponsors may use the Sample Title VI Template ([Appendix 13-1 through 13-4](#)) or develop their own. Sponsors that develop their template must submit the plan for approval to NYSDOT. The Sponsor must have procedures to review their processes and collect and analyze data.

13.2.1.4 Monitoring and Review Process

Sponsors must develop procedures for identifying and addressing potential discrimination or discriminatory practices within their departments/agencies. The Title VI Plan must include procedures on how the Sponsor's departments/agencies are monitored and reviewed for Title VI

compliance and outline procedures to eliminate and address discrimination and resolve deficiencies when non-compliance occurs. In addition, Sponsors administering federal and state aid contracts must monitor prime contractors, subcontractors, consultants, and sub-consultants for Title VI compliance.

13.2.1.5 Data Collection and Analysis

Sponsors must develop procedures for collecting statistical data (race, color, national origin, and sex) of participants in and beneficiaries of the Sponsor's programs. Collecting data helps New York State identify and prioritize problem areas and evaluate policies and programs' effectiveness to ensure nondiscrimination. The Title VI Plan must describe how the Sponsor plans to collect Title VI-related data on an ongoing basis.

13.3 LIMITED ENGLISH PROFICIENCY (LEP)

Presidential Executive Order (EO) 13166 "Improving Access to Services for Persons with Limited English Proficiency" contains two significant components. The first component is designed to improve enforcement and implementation of Title VI obligation to prohibit discrimination based on national origin. The obligation based on national origin includes prohibiting recipients (NYSDOT) and sub-recipients (Sponsors) of federal financial assistance from discriminating against individuals for whom English is not their first language by failing to provide meaningful access to services, programs, and activities for individuals who have LEP.

The second component requires all federal agencies to meet the same standards as federal financial assistance recipients and Sponsors in providing meaningful access for LEP individuals to federally funded programs. Sponsors and the federal government, based on available resources, must provide materials in other languages or interpreters at meetings when individuals have LEP.

Sponsors should consider the following measures to implement LEP strategies:

- Written translation of the Sponsor's vital documents,
- Language Implementation Plan,
- Bilingual staff for translation,
- Language needs assessments or efforts which consider:
 - The number or proportion of LEP persons in the eligible service population,
 - The frequency in which LEP individuals encounter the Sponsor's programs or activities, and
 - The Program's importance, activity, or services provided by the Sponsor.

Outreach materials, including public meetings/hearings and announcements, *must* be available in languages the affected population understands. Public meetings and hearings should be held at both geographically and structurally accessible facilities. Efforts should be made to schedule public meetings and hearings that do not conflict with the impacted communities' work schedules

and should be held in facilities easily accessible by public transportation. Public meetings and hearing announcements should indicate that accommodations, to the extent possible, will be provided for individuals with disabilities and populations with LEP. If requested, spoken and sign language interpreters and alternately formatted materials should be provided at no cost.

Outreach materials, including public meeting/hearing announcements, must be available in languages the affected population understands.

13.4 THE REHABILITATION ACT OF 1973 AND THE AMERICANS WITH DISABILITIES ACT (ADA)

As amended, Section 504 of the Rehabilitation Act of 1973 prohibits discrimination based on disability in any federally assisted program or activity. [Section 504](#), codified in [49 CFR Part 27](#), prohibits discrimination based on an individual's disability in transportation-funded programs, activities, and services receiving or benefiting from federal financial assistance from the USDOT via FHWA.

[The Americans with Disabilities Act](#) (ADA, 1990) is a broader civil rights statute that prohibits discrimination against people with disabilities in all areas of public life regardless of funding source. [Title II, 28 CFR Part 35](#) of the ADA pertains explicitly to state and local governments.

Sponsors must implement the following as part of their oversight responsibilities:

- Ensure that all departments are informed of their responsibilities to provide accessibility in their activities, programs, services, and facilities (i.e., department's public rights-of-way).
- Have a designated 504/ADA Coordinator responsible for coordinating Section 504/ADA compliance with all departments.
- Ensure the Sponsor and its sub-recipients apply appropriate accessibility standards to their transportation facilities as defined in NYSDOT's HDM.
- Ensure all complaints filed under Section 504 and/or the ADA are processed following established complaint procedures.
- Ensure that information in electronic format is accessible to people with disabilities.
- Provide public notice of the Sponsor's ADA provisions.
- Conduct self-evaluations.
- Ensure their ADA Transition Plan is in place and updated, as noted in their ADA Transition Plan. See [Section 13.4.3: ADA Transition Plan](#).

The Sponsor must have a Designated ADA Coordinator .

13.4.1 Nondiscrimination

Title 49 CFR 27.7 requires a Sponsor's programs or activities that receive federal financial assistance when providing aid, benefits, services, activities, and public facilities to be accessible to persons with disabilities. The ADA requires public facilities and programs to be accessible regardless of the funding source. The Act also requires effective communication with persons with disabilities when Sponsors respond to their requests. Communication venues and media (public meetings, announcements, and publicity) must all be accessible. During project development, any public meetings or outreach shall comply with Title 49 requirements.

Regardless of where the funding comes from, all public facilities and programs must be accessible, per the ADA.

13.4.2 Self-Evaluation

Title 28 CFR 35.105 is the U.S. Department of Justice (USDOJ) Title II regulation that requires public entities, even if they do not receive federal funds, to evaluate their current policies, practices, programs, services, and activities and to make the self-evaluation available for public comment. In addition, the ADA Transition Plan Checklist, which can be found in **Appendix 13-2**, maybe used for self-evaluations.

Title 49 CFR 27.11 requires recipients (NYSDOT) and subrecipients (Sponsors) to conduct self-evaluations of policies, programs, practices, services, and activities for compliance with the ADA.

Self-evaluations are critical to improving your agency's processes.

13.4.3 ADA Transition Plan

Title 28 CFR 35.150(d)(1) requires "a public entity that employs 50 or more persons" to prepare an ADA Transition Plan identifying non-compliant pedestrian routes and facilities in the municipal Sponsor's public right-of-way. ADA Transition Plans shall include a plan and schedule for corrective action. Failure to create and maintain an ADA Transition Plan may result in an entity's ineligibility to receive federal funds.

If a public entity employs fewer than 50 persons, the entity needs to only conduct self-evaluations (see **Section 13.4.2**).

The ADA Transition Plan should include detailed information about the condition of the Sponsor's pedestrian-accessible route network, a list of the physical barriers that limit accessibility to its programs, activities, or pedestrian facilities, and the schedule to correct any non-compliance; this should include identifying the party responsible for implementing the corrective action to ensure all Sponsor facilities are accessible to individuals with disabilities. The Sponsor shall provide an opportunity for interested persons or organizations to participate in the development of the transition plan and a copy of the plan shall be made available for public inspection. For more information, refer to **28 CFR 35.150(d)(1), (3)(i-iv)**.

The ADA Transition Plan Checklist (found in [Appendix 13-2](#)), the ADA Transition Plan (found in [Appendix 13-3](#)), and the ADA Proposed Work Plan and Schedule (found in [Appendix 13-4](#), which are fillable forms) were developed to assist Sponsors in implementing their ADA Transition Plans. In addition, Sponsors are strongly encouraged to use the ADA Transition Plan Checklist located in Appendix 13-2 as a guide when preparing their own ADA Transition Plan.

NYSDOT has its own [ADA Transition Plan](#), which includes an inventory of sidewalks and curb ramps alongside state-owned transportation infrastructure and a rating for accessibility of each. NYSDOT continues to update this inventory as it completes capital work at these locations and periodically refreshes the statewide list.

NYSDOT may construct sidewalks, curbs, and curb ramps alongside State highways located in Villages ([NYS Highway Law, Article 3, Section 46](#)), Towns ([NYS Highway Law Section 140](#)), and Cities ([NYS Highway Law, Article 12-B, Section 349-c](#)); however, under the statutory provisions granting NYSDOT such authority, respective Villages, Towns, and Cities are responsible for repairing and maintaining sidewalks, curbs, and curb ramps in their respective municipality. Maintenance includes both preventive and corrective maintenance. For further information, consult the applicable Highway Law Sections provided below.

When NYSDOT alters a State highway that provides pedestrian access, NYSDOT must design and construct the State highway in such a manner that a barrier to the usability of the streets by a protected class (individuals with disabilities) is not created or retained. See [28 CFR 35.150, 35.151\(b\), 35.151\(i\)](#). If NYSDOT does not alter the State highway, it remains the municipality's legal responsibility to comply with applicable ADA accessibility requirements.

A Sponsor's ADA Transition Plan shall include a list of locations with physical barriers that limit the accessibility of programs, activities, or services within its jurisdiction, including those identified alongside State highways. However, to ensure a clear understanding of anticipated and upcoming NYSDOT capital work, municipalities should discuss the State inventory and NYSDOT plans with the Regional Local Project Liaison (RLPL).

The Sponsor's completed ADA Transition Plan must be made available for public comment. For more information regarding ADA Transition Plans, contact the RLPL.

13.4.4 Design and Construction

Sponsors must comply with ADA accessibility standards for all facilities they construct, maintain, monitor, or upgrade. Compliance applies to all projects classified as new construction, reconstruction, rehabilitation, resurfacing, or repair, as well as any work undertaken by the Sponsor's forces. Therefore, access to existing and proposed pedestrian facilities in a public right-of-way must be provided. The applicability of design and construction standards is in [Chapter 9](#) of this manual.

The USDOJ and the FHWA clarified in the [2013 DOJ/DOT Joint Technical Assistance Informal Guidance Document](#) that "pavement alteration" activities require a Sponsor to address curb

ramp compliance and distinguish between “pavement maintenance” activities that do not require such compliance. This guidance further clarifies this requirement stating that whenever a “pavement alteration” is made to a street, roadway, or highway, curb ramps must be provided at locations where curbs or other barriers restrict access to sidewalks or other pedestrian walkways. Examples of “pavement alterations” include:

- additions of new asphalt layers,
- in-place recycling,
- micro-surfacing/thin lift,
- mill and fill overlays,
- open-graded surface courses,
- cape seals,
- resurfacing,
- new construction,
- rehabilitation, and
- reconstruction.

Curb ramps and detectable warnings must be installed before or during the “pavement alteration” project.

Examples of “pavement maintenance” include:

- crack filling and sealing,
- surface sealing,
- chip seals,
- slurry seals,
- fog seals,
- scrub seals,
- joint crack seals,
- dowel bar retrofits,
- spot locations of high-friction surface treatments,
- diamond grinding, or
- pavement patching.

Structural changes to existing conditions must be clearly documented that they meet ADA standards.

See [NYSDOT HDM Chapters 2, 7, and 18](#) and the [DOJ/DOT Joint Technical Assistance Informal Question and Answer Supplemental](#) for additional guidance.

13.5 EQUAL EMPLOYMENT OPPORTUNITY (EEO)

The [Federal Aid Highway Act of 1968 \(23 USC 140\(a\) and 23 CFR 230\)](#) ensures nondiscrimination in employment based on race, color, religion, sex, or national origin on any federally aided projects. Sponsors are required to include EEO provisions in all their federal aid construction contracts by physically including Form FHWA 1273, [Required Contract Provisions Federal Aid Construction Contract](#) in the contract proposal. EEO requirements are included in [Appendix 12-1](#), [Chapter 14](#), and [Chapter 15](#).

Sponsors must identify employment goals for each specific contract; see [Chapter 12](#). These goals are included in [Appendix 12-1](#), which is included in the contract proposal. Contractors are required to submit workforce data to Sponsors during the performance of their construction contracts. Employees and work hours must be entered weekly in NYSDOT's civil rights reporting software [Equitable Business Opportunity \(EBO\)](#). Sponsors must review EBO and compare the EEO Workforce Utilization Report to the certified payroll system. EEO goals and attainments are also monitored by both the RLPL and Sponsor. When the EEO goals are not met, the Contractor must provide Good Faith Effort (GFE) documentation to the Sponsor. GFE are action-oriented steps taken to show that all concrete, tangible, result-oriented efforts were exhausted through all reasonable means to comply with affirmative action hiring of the contract EEO goals.

Minority and female workforce participation goals must be maintained on a month-to-month basis or GFE needs to be provided.

13.6 APPRENTICESHIP AND TRAINING PROGRAMS

Training is a Civil Rights activity that may address the under-utilization of minorities, females, and economically-disadvantaged persons in highway construction and engineering contracts. The Sponsor must include [Item 691 Training and Apprenticeship Requirements](#) if the construction cost is estimated above \$5 million. If the construction cost is below \$5 million and there is an opportunity for training, the 691 Training items can be included.

An apprenticeship training program must be registered with the [NYS Department of Labor \(NYSDOL\)](#) and approved by NYSDOT. Only FHWA-approved On-the-Job Training programs or [NYSDOL/U.S. Department of Labor \(USDOL\)](#) registered apprenticeship programs may be used to fulfill training requirements. The review process and approval process are extensive; therefore, appropriate time should be allocated for the approval process. Sponsors should coordinate training program activities with their RLPL.

The training item can be waived if all parties agree that the project has no meaningful and effective training.

Per [EI 21-014](#), training requirements may be waived. If the construction cost is below \$5 million, the Sponsor may submit a waiver request, which must be documented in the PS&E submission.

13.7 DISADVANTAGED BUSINESS ENTERPRISE (DBE) PARTICIPATION

[Title 49 CFR 26.45](#) requires NYSDOT to submit a programmatic [DBE Plan](#) to the USDOT. Therefore, Sponsors must use NYSDOT's approved DBE Plan.

Only firms certified through the New York State Unified Certification Program (NYSUCP) as DBEs may be used to accomplish DBE participation goals set on federal aid contracts. The [NYSUCP DBE Directory](#) is the sole resource for identifying DBEs. Firms not certified as DBEs may apply for certification online with any of the four Certifying Partners listed on the Directory's home page. NYSDOT's DBE Certification Unit assists with [DBE Certification](#). NYSDOT does not pre-qualify nor recommend firms for participation.

DBE firms must be certified at the time of project award.

13.7.1 DBE Contract Requirements / Establishing DBE Goals

13.7.1.1 Consultant and Professional Services

13.7.1.1.1 Architectural & Engineering (A&E) Consultant Contracts

All federally aided A&E consultant contracts must encourage DBE participation. The RLO's Project Manager or designee shall monitor DBE participation as the project progresses. The prime consultant shall report attainment data to the Sponsor each time a payment request is submitted using EBO. For more information about consultant selection procedures, see [LPM Chapter 6](#).

13.7.1.1.2 Non-Architectural & Engineering (Non-A&E) Consultant Contracts

For non-A&E contracts such as real estate, legal, accounting, auditing, and public relations, the Sponsor, in coordination with the RLPL and NYSDOT's Office of Diversity and Opportunity (ODO), will determine the DBE goal during the final stages of drafting the Request for Proposals. This goal is based on the value of the contract, the type of work involved that could be subcontracted, and the availability of DBE to accomplish the work. Payment data shall be reported by the prime consultant to the Sponsor, utilizing the EBO system each time a payment is made.

13.7.1.2 Construction Contracts

The Sponsor or their designee will ensure that the construction contract includes participation goals in accordance with NYSDOT's current [DBE Program Plan](#). The DBE Program Plan is approved by FHWA and establishes contract goals by geographic location and project work type. To set the DBE goal, use the following documents:

- Table of Construction Contract Groups,
- Multi-Regional (Market Area) Map,
- Baseline DBE Goal Selection Chart, and
- The assessment portion of the Construction Contract DBE Goal Assessment Form.

These forms and instructions can be found on [NYSDOT's Civil Rights website](#).

13.7.2 DBE Goal Assessment Process

The Sponsor may request a modification of the DBE goal. To implement a modification to the DBE goal to either increase, reduce, or be exempt during final design, the Sponsor is required to complete the DBE Goal Assessment Form. For example, increases might be appropriate for those projects with additional opportunities for DBE participation due to the project's variety of operations or magnitude. Conversely, a reduction or exemption could be sought for projects with no significant DBE participation opportunities, perhaps due to being specialized in nature with few pay items. The Sponsor must submit the [DBE Goal Assessment Form](#) to the RLPL before contract document review and approval, but preferably after authorization of Detailed Design. Refer to [HDM Chapter 21](#), "Contract Plans, Specifications, and Estimates," or [NYSDOT's Civil Rights website](#).

Approved revisions to the DBE goal must be included in the project's advertisement, contract proposal, and contract (see [LPM Chapter 14](#) for guidance).

A DBE goal assessment must be performed at ADP to ensure the goals are appropriate to the project.

13.7.3 DBE Goal and Good Faith Efforts (GFE) Documentation

The Sponsor or their designee must set the goal, monitor, and report on a contract's DBE participation. If the goal is not met, the Sponsor must collect documentation of good faith efforts demonstrated by the contractor. Further details on setting DBE goals can be found in [LPM Chapter 12](#); details on GFE documentation can be found in [LPM Chapter 14](#) and [LPM Chapter 15](#) and [NYSDOT's MURK Part 1A CAM Section 102-12](#).

Sponsors must work with NYSDOT staff to ensure data and process quality throughout the project delivery and construction processes. In addition, NYSDOT requires civil rights reporting through the EBO software to monitor construction contract payments, DBE goals, DBE commitments, and DBE attainments. Further details on EBO can be found in [LPM Chapter 14](#).

GFE must show concrete, tangible, result-oriented efforts were taken to meet the goal.

13.7.4 NYS Executive Order 162 Ensuring Pay Equity

NYS EO 162, Ensuring Pay Equity by State Contractors” issued in January 2017, is intended to help assure State laws are being complied with by requiring contractors and consultants to provide documentation demonstrating whether women are being paid the same salaries as men for work being performed. Refer to **Standard Specifications §107-16** and **LPM Chapter 15** for more information.

This reporting requirement applies to every individual who is paid in conjunction with the contract.

13.8 PROMPT PAYMENT

The Sponsor is responsible for ensuring all consultants and contractors comply with the prompt payment contract requirements in **49 CFR 26.29**. These requirements must be included in the Sponsor’s contract specifications. In addition, the Sponsor is responsible for quality control monitoring of prompt payments using EBO, with the RLPL providing quality assurance monitoring and enforcement.

While **49 CFR 26.29** requires payment to subcontractors within thirty (30) days, New York State and General Municipal Laws are more stringent. Specifically, **NYS Finance Law Article 9, Section 139-f(2)**, and **NYS General Municipal Law, Article 5-A, Section 106-b(2)** require prime consultants and contractors to pay their subconsultants/contractors and their various vendors within seven (7) calendar days of receipt of payment from the public owner. Refer to **Standard Specifications 109-07** and **LPM Chapter 15** for more information.

The Sponsor may withhold future payment to the Contractor, per their Contract, until prompt payment issues are resolved by the Contractor.

13.9 FEDERAL REPORTING REQUIREMENTS

Consultants and contractors must submit data to Sponsors using NYSDOT’s Civil Rights reporting software, EBO. Sponsors are required to ensure that consultants and contractors submit timely, accurate, and complete data. It enables NYSDOT to submit to the FHWA timely, accurate, and complete federal reports that include all federally aided contracts in New York State. A Sponsor’s failure to ensure timely, accurate, and complete reporting of Civil Rights data may result in a loss or delay of federal aid. All data must be entered before final project acceptance by the Sponsor.

13.10 CONTRACT COMPLIANCE REVIEWS

Sponsors must conduct Civil Rights monitoring on all construction contracts. In addition, the Sponsor may be directed to perform a comprehensive construction contract compliance review

per [23 CFR 230 Subpart D](#). The procedure and forms for the construction contract compliance review process are in [NYSDOT's MURK Part 1A CAM Section 98](#).

NYSDOT's ODO annually completes a compliance review of Sponsors who were recipients of federal aid. The ODO analysts will contact the Sponsor via telephone and follow up with a letter. In addition, the appropriate RLPL will be provided with additional information on the review. Compliance Reviews not only cover a specific project but evaluate the Sponsor's internal compliance processes and procedures.

13.11 FINAL REPORTS—CONTRACT CLOSE-OUT

Sponsors must ensure that all required Civil Rights data for federally funded and state-funded projects are in EBO before the State-Local Agreement's close-out. Failure to provide timely, accurate, and complete data may jeopardize reimbursement and future aid.

13.12 CIVIL RIGHTS REQUIREMENTS ON STATE-FUNDED (NON-FEDERAL AID) PROJECTS

13.12.1 Minority and Women-Owned Business Enterprises (M/WBE) Program and Service-Disabled Veteran-Owned Business (SDVOB) Program

The requirements of [New York State Executive Law Article 15-A](#), [Article 3 of the Veteran Services Law](#), and the regulations promulgated under [5 NYCRR 140-145](#) and [9 NYCRR 252.2](#) apply to all state-funded projects. Sponsors shall comply with these laws, rules, regulations, gubernatorial EOs, and the [M/WBE](#) and [SDVOB Program](#) requirements.

All contracts entered into by the Sponsor in furtherance of state-issued, non-federally aided funds must be assessed to determine appropriate M/WBE/SDVOB goals derived from NYSDOT's Agency M/WBE and SDVOB Goal Plans. For detailed information on goal setting, Goal Assessment, Good Faith Effort Documentation, and Goal Waiver Requests for M/WBE see [Appendix 13-5](#); for SDVOB, see [Appendix 13-6](#); and for GFE, see [Appendix 13-7](#).

13.13 NON-COMPLIANCE WITH CIVIL RIGHTS REQUIREMENTS

By signing the State-Local Agreement, the Sponsor becomes contractually obligated to ensure all federal and state Civil Rights laws, rules, regulations, and federal and state EOs are adhered to in contracts with its consultants and contractors. Failure by the Sponsor to carry out its responsibilities under and comply with federal and state civil rights requirements may result in a loss of federal or state aid.

13.14 REFERENCES, CHAPTER 13.0 CIVIL RIGHTS REQUIREMENTS

TITLE	LINK
FEDERAL LAWS & REGULATIONS	
23 USC § 140(a) , Nondiscrimination	https://www.govinfo.gov/content/pkg/USCODE-1995-title23/html/USCODE-1995-title23-chap1-sec140.htm
42 USC § 2000d, Title VI of the Civil Rights Act	https://www.govinfo.gov/content/pkg/USCODE-2008-title42/pdf/USCODE-2008-title42-chap21-subchapV.pdf
23 CFR § 200.9 , State Highway Agency Responsibilities	https://www.govinfo.gov/content/pkg/CFR-2008-title23-vol1/xml/CFR-2008-title23-vol1-sec200-9.xml
23 CFR § 230 , External Federal Highway Programs	https://www.govinfo.gov/content/pkg/CFR-1999-title23-vol1/xml/CFR-1999-title23-vol1-part230.xml
23 CFR § 230.111 , Implementation of Special Requirements for the Provision of On-the-Job Training	https://www.govinfo.gov/content/pkg/CFR-2011-title23-vol1/xml/CFR-2011-title23-vol1-sec230-111.xml
23 CFR § 450 , Planning Assistance and Standards	https://www.govinfo.gov/content/pkg/CFR-2004-title23-vol1/xml/CFR-2004-title23-vol1-part450.xml
28 CFR § 35.105 , Self-evaluation	https://www.govinfo.gov/content/pkg/CFR-2011-title28-vol1/xml/CFR-2011-title28-vol1-sec35-105.xml
28 CFR § 35.150(d)(1) , Transition Plan	https://www.govinfo.gov/content/pkg/CFR-2010-title28-vol1/xml/CFR-2010-title28-vol1-sec35-150.xml
28 CFR § 35.151 , New Construction & Alterations	https://www.govinfo.gov/content/pkg/CFR-2010-title28-vol1/xml/CFR-2010-title28-vol1-sec35-151.xml
49 CFR § 26 , Disadvantaged Business Enterprises (DBE)	https://www.govinfo.gov/content/pkg/CFR-2011-title49-vol1/xml/CFR-2011-title49-vol1-part26.xml
49 CFR § 26.29 , What prompt payment mechanisms must recipients have?	https://www.govinfo.gov/content/pkg/CFR-1999-title49-vol1/xml/CFR-1999-title49-vol1-sec26-29.xml
49 CFR § 26.45 , How do recipients set overall goals?	https://www.govinfo.gov/content/pkg/CFR-2009-title49-vol1/xml/CFR-2009-title49-vol1-sec26-45.xml
49 CFR § 27.7 , Discrimination Prohibited	https://www.govinfo.gov/content/pkg/CFR-2011-title49-vol1/xml/CFR-2011-title49-vol1-sec27-7.xml

TITLE	LINK
FEDERAL LAWS & REGULATIONS	
49 CFR § 27.11 , Remedial and Voluntary Actions and Compliance Planning	https://www.govinfo.gov/content/pkg/CFR-1998-title49-vol1/xml/CFR-1998-title49-vol1-sec27-11.xml
Title VI of the Civil Rights Act of 1964	https://www.fhwa.dot.gov/civilrights/programs/title_vi
The Federal Aid Highway Act of 1968	https://www.govinfo.gov/content/pkg/STATUTE-82/pdf/STATUTE-82-Pg815.pdf
Section 504 of the 1973 Rehabilitation Act	https://www.dol.gov/agencies/oasam/centers-offices/civil-rights-center/statutes/section-504-rehabilitation-act-of-1973
Americans with Disabilities Act of 1990 (ADA)	https://www.ada.gov/ada_intro.htm
Presidential Executive Order (EO) 13166	https://www.justice.gov/crt/executive-order-13166
STATE LAWS & REGULATIONS	
5 NYCRR 140-145 , M/WBE Program	https://esd.ny.gov/sites/default/files/MWBERegulations-120220.pdf
9 NYCRR 252.2 , SDVOB Program	https://govt.westlaw.com/nycrr/Document/Ie8529745221211e4a6bf0000845b8d3e?listSource=Search&contextData=%28sc.Search%29&list=NYREGULATION_PUBLICVIEW&rank=5&transitionType=Default
Veteran Services Law Article 3 , SDVOB	https://law.justia.com/codes/new-york/2022/vet/article-3/
NYS Executive Law Article 17-B , SDVOB Program	https://portal.nyserda.ny.gov/servlet/servlet.FileDownload?file=00Pt0000004FykREAS
NYS Executive Order 162 , Ensuring Pay Equity	https://www.governor.ny.gov/sites/default/files/atoms/files/EO_162.pdf
NYS Highway Law, Article 3, § 46 , State Highways in Villages	https://www.nysenate.gov/legislation/laws/HAY/46
NYS Highway Law, Article 3 § 140 , State Highways in Towns	https://codes.findlaw.com/ny/highway-law/hay-sect-140.html
NYS Highway Law, Article 12-B, § 349-C , State Highways in Cities	https://www.nysenate.gov/legislation/laws/HAY/349-C
NYS Finance Law, Article 9, § 139-f(2) , Payment on Public Work Projects	Legislation NY State Senate (nysenate.gov)
NYS General Municipal Law, Article 5-A, Section 106-b , Payment on Public Works Projects	https://www.nysenate.gov/legislation/laws/GMU/106-B

TITLE	LINK
NYSDOT POLICIES, PROCEDURES, & GUIDANCE	
ADA Transition Plan	https://www.dot.ny.gov/programs/adamanagement/ada-transition-plan
DBE Certification Program	https://www.dot.ny.gov/main/business-center/civil-rights/general-info/dbe-certification
NYSDOT Contract Administration Manual, Section 98	https://www.dot.ny.gov/main/business-center/contractors/construction-division/forms-manuals-computer-applications-general-information/murk_1a
NYSDOT Standard Specifications	https://www.dot.ny.gov/main/business-center/engineering/specifications/busi-e-standards-usc/usc-repository/2022_1_specs_usc_vol1.pdf
NYSDOT Highway Design Manual, Chapter 21	https://www.dot.ny.gov/divisions/engineering/design/dqab/hdm/chapter-21
NYSDOT DBE Plan	https://www.dot.ny.gov/main/business-center/civil-rights2/civil-rights-repository/Tab/DBE%20Program%20Plan%202019%20Final%20%20121719.pdf
NYSDOT's M/WBE Plan	https://www.dot.ny.gov/main/business-center/civil-rights/mwbe-program
NYSDOT's SDVOB Plan	https://www.dot.ny.gov/main/business-center/civil-rights/sdvob-program
NYSDOT Title VI Plan	https://www.dot.ny.gov/main/business-center/civil-rights/title-vi-ej
NYSDOT Engineering Instruction, EI 21-014	https://www.dot.ny.gov/portal/pls/portal/mexis_app.pa_ei_eb_admin_app.show_pdf?id=13988
Title VI Nondiscrimination Plan	https://www.dot.ny.gov/main/business-center/civil-rights/title-vi-ej
ADDITIONAL RESOURCES	
DOJ/DOT Joint Technical Assistance Informal Question and Answer Supplemental	https://www.ada.gov/doj-fhwa-ta-supplement-2015.html
The NYSUCP DBE Directory	https://nysucp.newnycontracts.com/

**New York State
Department of Transportation
Local Projects Manual**

**Chapter 14
Advertisement, Contract Letting,
and Award**



TABLE OF CONTENTS

TABLE OF CONTENTS	2
Figures	3
ACRONYMS	3
NOTE	3
14.1 INTRODUCTION	4
14.2 ADVERTISING	4
14.2.1 New York State Contract Reporter (NYSCR).....	5
14.2.2 Instructions to Bidders Regarding Proposed DBE Participation	6
14.3 AMENDMENTS	6
14.4 BID LETTING AND BID ANALYSIS	7
14.4.1 Bidder Responsibility.....	8
14.4.2 Bid Analysis	9
14.4.3 Reasonableness Justification	10
14.4.4 Single Bid Analysis.....	11
14.4.5 Rejection of All Bids	12
14.4.6 Bidder Error.....	12
14.4.7 Move to Second Bidder.....	13
14.5 PRE-AWARD CIVIL RIGHTS RESPONSIBILITIES	13
14.5.1 Participation Package.....	15
14.5.2 Good Faith Efforts (GFE)	16
14.5.3 Equitable Business Opportunities (EBO).....	20
14.6 BRIDGE CONSTRUCTION UNIT COST DATA (IF APPLICABLE)	20

14.7 AWARD PACKAGE.....20

14.8 CONTRACT AWARD21

**14.9 REFERENCES, CHAPTER 14 ADVERTISEMENT, CONTRACT LETTING, AND AWARD
.....23**

Figures

Table 14-1: Sponsor’s New York State Contract Reporter Registration Steps6

ACRONYMS

CCA-2	New York State Uniform Contracting Questionnaire	LPB	Local Programs Bureau
CMP	Construction Management Plan	M/WBE	Minority/Woman-Owned Business Enterprise
DBE	Disadvantaged Business Enterprises	NYSCR	New York State Contract Reporter
EBO	Equal Business Opportunity	PS&E	Plans, Specifications, and Estimates
EEO	Equal Employment Opportunity	RLPL	Regional Local Project Liaison
FHWA	Federal Highway Administration	UCP	New York State Unified Certification Program
GFE	Good Faith Effort	SDVOB	Service-Disabled Veteran-Owned Business

NOTE

This chapter has associated appendices and forms at: <https://www.dot.ny.gov/plafap>

The links for the words **highlighted** throughout this chapter (except LPM chapter links) can be found at the end of this chapter, in **Section 14.9 References, Chapter 9, Advertisement, Contract Letting, and Award.**

14.1 INTRODUCTION

This chapter describes the various phases of the contracting process including solicitation of bidders (advertising), bid opening, bid analysis to identify the lowest bidder, and contract award and documentation for locally administered transportation construction contracts. The Sponsor must have an approved Construction Management Plan (CMP) prior to contract award, appropriately revised to reflect project staffing and be signed by the NYSDOT Regional Local Project Liaison (RLPL), or appropriate designee (see [LPM Chapter 12, Section 12.2.2](#) and [Appendix 12-3](#)).

The following federal regulations apply to ALL projects:

- Advertising for bids and proposals ([23 CFR 635.112](#)),
- Method of Construction ([23 CFR 635.104](#)),
- Participation by Disadvantaged Business Enterprises (DBE) in US Department of Transportation Financial Assistance Programs ([49 CFR 26](#)); and
- Equal Employment Opportunity (EEO) on Federal and Federal-Aid Construction Contracts (Including Supportive Services) ([23 CFR 230](#)).

When a discrepancy exists between federal, state, and municipal laws, rules and regulations, federal law prevails; with the exception when State and municipal laws, rules, and regulations may be stricter and therefore have precedence.

14.2 ADVERTISING

Advertising for all federal aid construction contracts must meet federal requirements and foster widespread competitive bidding. When the contract bid documents, including Plans, Specifications, and Estimate of quantities (PS&E), have been assembled, and approved by the RLPL and the Sponsor receives Federal Authorization to Proceed from the RLPL, the Sponsor is required to advertise the contract for bidding in accordance with [23 CFR 635.112](#). The Sponsor could forfeit federal reimbursement if the advertisement of a contract takes place before receiving a Notification to Proceed.

New York State requires the publication of the solicitation of bids for a construction contract to be advertised in [The New York State Contract Reporter](#) (NYSCR) for at least three weeks (15 business days) before the opening of the bids. Additionally, the Sponsor is encouraged to place additional advertisements in other appropriate publications (e.g., local newspapers, trade journals). The use of several forms of advertising publications will help avoid a single bidder, as well as give more opportunities to fulfill both DBE and EEO requirements. Advertising costs should be charged to the construction phase. A Construction Advertisement Checklist and a sample Notice to Bidder – Advertisement to Bid indicates the information to be included in an advertisement (see [Appendix 14-7](#) and [Appendix 14-8](#)).

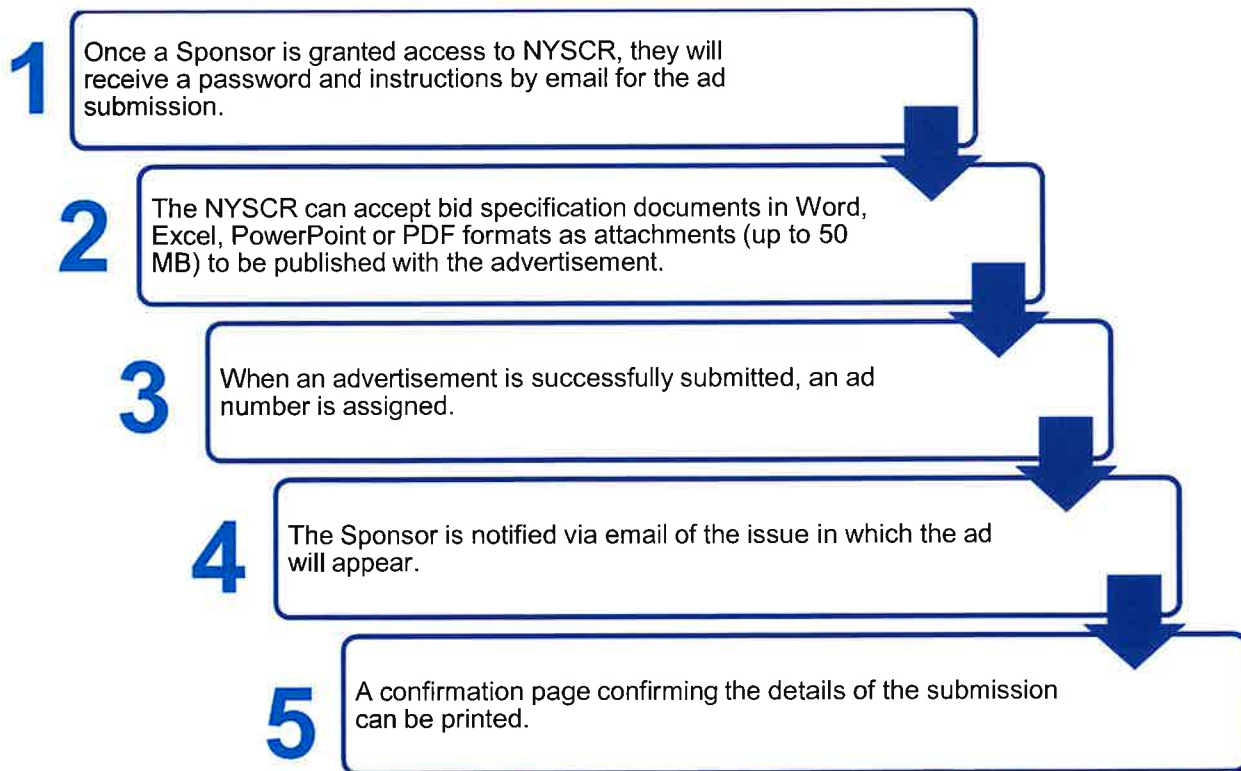
Construction contracts must be advertised in the New York State Contract Reporter.

The advertisement must identify the EEO goals for women and minorities in every contract regardless of fund source. The advertisement must identify DBE contract goals (federal funds), if applicable. If a 0% DBE goal is established, NYSDOT strongly encourages the use of DBE contractors wherever possible. If the contract is state-funded (non-federal funds) the advertisement must identify Minority/Women-Owned Business Enterprise (M/WBE) and Service-Disabled Veteran-Owned Business (SDVOB) goals.

14.2.1 New York State Contract Reporter (NYSCR)

The NYSCR is an exclusively online publication requiring electronic submission of advertising content. To comply with federal requirements, all contracts with New York State (including locally administered federal aid transportation projects) for the procurement of goods and services must be published in the NYSCR. There is no fee for advertising or for viewing ads on the site. Sponsors must be registered before submitting advertisements and may do so from the [NYSCR registration website](#).

Figure 14-1: Sponsor's New York State Contract Reporter Registration Steps



Additionally, the NYSCR can capture and provide in an Excel format, a list of registered users who viewed, bookmarked, opened bid documents, or opted to receive bid update notifications for the advertisement, including their contact information. All information exchanges with the NYSCR (email confirmations, downloaded spreadsheets, screen captures of advertisements, etc.) should be printed and kept in the project file.

The NYSCR is published on weekdays and new solicitations appear every morning. Any advertisement submitted successfully to the NYSCR on a given day appears the following business day. Advertisements submitted Friday, Saturday or Sunday appear on Monday, if it is not a legal holiday.

The earliest bid due date allowed in the ad insertion form shall be 15 business days (Monday-Friday) after the advertisement is published. The insertion, publication, and earliest due dates can be calculated by using the Publication Calculator Tool on the NYSCR's website. If an earlier bid due date becomes necessary, the Sponsor must get approval from the RLPL, with help from the NYSCR, which can be sought through the NYSCR Contact Us page, link provided in [Section 14.9 Reference](#) or by calling Empire State Development, Procurement Assistance Services/NYSCR at (518) 292-5266.

Contracts to be awarded on a sole source or single source basis must have prior approval from the Main Office Local Programs Bureau (LPB). If approved, they will also need to be advertised.

Sole source is a situation in which only one contractor can supply the goods or services.

Single source is when two or more contractors can supply the goods or services, but one is selected over the others because of distinguishable expertise, previous experience with similar contracts, etc.

14.2.2 Instructions to Bidders Regarding Proposed DBE Participation

[NYSDOT Standard Specification §102-12](#) indicates that the bidder shall submit a complete DBE Participation Package with its proposal which includes DBE commitments (i.e., DBE name, address, work category, and commitment amount); DBE confirmation on Department forms (i.e., AAP 20, AAP 22, or AAP 23 depending on Work Category) for each DBE commitment; and good faith effort (if DBE commitments do not meet the goal). In addition, bidders shall submit completed Appendix 12-11 CONR80LL Bidder's List with their bid. To assist the Sponsor with collecting this information, see [Appendix 12-10 \(formerly Appendix 14-9\), Summary of Federal DBE Commitments and Bid Requirements \(AAP14LL\)](#) .

14.3 AMENDMENTS

An amendment is a formal modification of a proposed contract, issued after the advertisement publication date, and prior to the opening of bids. The Sponsor shall have a process in place to ensure all plan holders and NYSDOT receive amendments when issued.

The Sponsor shall have a process in place to ensure all plan holders and NYSDOT receive amendments when issued.

The following should be considered when a Sponsor is contemplating amending a contract:

- If significant changes to the scope or scale are necessary, the Sponsor should seek advice from the RLPL (changes may require FHWA approval if the project is on the NHS or a Project of Division Interest). If the changes are not allowed or appropriate to be incorporated by amendment the Sponsor should cancel the advertisement, redesign the project, and then re-let the project.
- An amendment should be issued when the following errors are discovered:
 - Any contract pay-item quantity change of $\pm 20\%$ in Engineer's Estimate.
 - Any contract pay-item quantity change, multiplied by the estimated unit price (or change in a lump sum item), which alters the total engineer's estimate by more than $\pm 1\%$.
 - DBE or MBE/WBE/SDVOB goal(s) incorrectly stated in the contract.
 - EEO goals incorrectly stated in the contract.

14.4 BID LETTING AND BID ANALYSIS

Per **23 CFR 635.113(a)**:

"All bids received in accordance with the terms of the advertisement shall be publicly opened and announced either item by item or by total amount. If any bid received is not read aloud, the name of the bidder and the reason for not reading the bid aloud shall be publicly announced at the letting."

If the proposal includes alternate bidding procedures, the contract budget and alternate bidding award procedures must be declared before opening bids and the announcement of the apparent low bidder (see **LPM Section 12.5.9**). After all bid totals have been read aloud, the apparent low bidder is announced, and all bidders are informed that award is pending a complete bid analysis including mathematical verification, affirmation that the low bidder is responsible, and acceptance of the DBE/MBE/WBE/SDVOB Participation Package. The bid analysis shall be concluded, and contract award shall be made within 45 days as noted in **New York State Finance Law Section 140** and **NYS General Municipal Law Section 105**. If the award is not completed within 45 days, the contractor may withdraw their bid from consideration.

Bids must be publicly opened and read aloud.

Negotiation with any bidder (i.e., adjusting quantities, changing unit prices, adding, and subtracting work, etc.) before contract award is prohibited per [23 CFR 635.113\(a\)](#).

The Sponsor should use [Appendix 14-6, After Letting Checklist](#), as a resource for the necessary steps and documentation from Letting to Award.

14.4.1 Bidder Responsibility

For all federal aid contracts, determination of whether or not a business entity is a “responsible bidder” is made using the guidelines established by [9 NYCRR 4.170](#) whereby a contractor/vendor may be deemed “not responsible.”

The following must be verified as part of the bidder responsibility review by the Sponsor:

- For all contracts, the [New York State Uniform Contracting Questionnaire \(CCA-2\)](#) is used in the qualification of an entity as a “responsible bidder.”
 1. The NYSDOT Contract Management Bureau is responsible for reviewing and approving the CCA-2 questionnaire. After the low bidder is determined, the Sponsor should contact the RLPL as soon as possible to see if a CCA-2 is on file for the bidder. If not, a questionnaire shall be completed by the low bidder and submitted to the Contract Management Bureau as instructed. A link to the CCA-2 questionnaire is on [NYSDOT’s website](#). Similar checks must be conducted on subcontractors (see [LPM Chapter 15](#)). RLPLs should access the [AASHTOWare Project Preconstruction database](#) to confirm that a vendor (contractor and subcontractors) has an approved CCA-2 on file.
 2. The United States General Services Administration’s System for Award Management (SAM) [Debarred, Suspended, or Voluntarily Excluded Firms Ineligible for Federal Aid](#).
 3. NYS Department of Labor’s monthly [List of Employers Ineligible to Bid on or be Awarded any Public Work Contract](#).
 4. NYS Department of State’s [Corporation/Business Entity Database](#) to ensure that Corporations, Professional Corporations, Limited Liability Companies, and Limited Liability Partnerships have the proper authority to conduct business in New York State.
 - The Sponsor should print out the result of their search of the above databases and keep it in the project files. Acknowledgment of certification is noted in the “Bid Opening, Verification, and Sponsor Recommendation” letter ([Appendix 14-1](#)) to be provided with the Award Package as noted in [Section 14.7](#).
 5. Office of Safety and Health Administration (OSHA) website for [safety violations for a given firm](#).

6. In the event, there is an OSHA violation against the low bidder, it should not be an automatic disqualification. Provide a discussion indicating the violation, if it has been addressed or is being addressed as a statement to be provided with the Award Package as noted in Section 14.7.
7. **NYS Department of Labor Contract Registry** website for Certificate of Registration for all Contractors.

14.4.2 Bid Analysis

The Sponsor must conduct a bid analysis to ensure that the apparent low bid is responsible and reasonable and that the contract award will best promote the public interest. The preparation of a Tabulation of Bids (see **Appendix 14-4**) should be completed to include all bidders. A bid analysis generally consists of a comparative review between the Engineer's Estimate and the apparent low bidder's bid to determine if item quantities and prices are accurate and if assumptions made during the estimate process were valid. Information relative to the other bidders in the Tabulation of Bids is of value during the bid analysis if significant variations become apparent between the apparent low bid and the Engineer's Estimate.

The following steps must be performed for each contract as part of the bid analysis:

1. Review the bid items that are 25% over or under the Engineer's Estimate and look for potential errors.

A significant difference between the Engineer's Estimate and the total contract or item bid price by the apparent low bidder may indicate issues with commodity prices or regional work volume in the construction market. The distribution of bidders may indicate market conditions and competition relative to an individual project. A low total contract bid price by a bidder relative to other bidders closer to the Engineer's Estimate may suggest a misinterpretation of the bid documents by the Low Bidder; or simply that the Low Bidder has limited work and is bidding work closer to cost.

2. Evaluate items with high bid costs to determine if there is an omission or error in the plans or specifications. If something unusual is found, review the quantity to determine if there is a possibility there is an error in the quantity or in the unit price used in the Engineer's Estimate. If the item appears to be in question, contact the Project Designer/Engineer of Record.

Evaluate high bid items where the quantity is relatively small, the item may be a low productivity item and may, therefore, cost more than a typical weighted average or estimated price. The item should be compared with the other bidder's prices and if it still seems unusual, further analysis is necessary.

Note circumstances where quantity changes could affect the ranking of the bidders if corrections/changes are made to the quantities. If post-award changes are anticipated

that would change the ranking of the bidders, it should be recommended that all bids be rejected.

3. Evaluate bids with significant variations from the Engineer's Estimate, among the bidders, or noted in Step 1, review the items having the largest dollar amount differential for jobs with overall bids 15% higher or lower than the Engineer's Estimate. Include in the review, the analysis of the B portion of an A+B Contract when the difference is more than 50%. For contracts with multiple B time periods, evaluate any B time period that is more than 50% below the Engineer's Estimate.

Determine if any bid prices are obviously unbalanced to the potential detriment of the Sponsor and contract execution. (For example, if the obviously unbalanced bid prices are all for items which will occur at the beginning of the contract, and the Contractor defaulted, the Sponsor may be in a difficult position to recover payments made.) Base the analysis on verification of quantities, discussions with the apparent low bidder about whether the general location of the contract is convenient for the apparent low bidder and whether the apparent low bidder will ultimately yield the lowest cost.

Any discussion with the apparent low bidder during procurement is subject to [New York State Procurement Guidelines](#), as stated in [Article 11 of New York State Finance Law](#). Negotiations with contractors, during the period following the opening of bids and before the award of the contract, shall not be permitted per [23 CFR 635.113\(a\)](#). Discussions should be factual without discussion of the other bids or the Sponsor's contract award intentions. Contacting the apparent low bidder should not be a routine practice. If the low bidder cannot justify the unbalanced item(s), the contract should be considered for rejection. It may be very difficult to justify the removal of the low bidder with a recommendation to award to the second bidder if items are not significantly unbalanced. Once an award recommendation is reached, detailed justification must be provided to the RLPL. Though the bid may not be desirable, it may be acceptable.

When the Sponsor has some objection to the apparent low bidder or needs more time to evaluate qualifications of the apparent low bidder, the RLPL must be notified as soon as possible of the objection with a summary of the justifiable reasons. The RLPL will then notify the NYSDOT MO-Local Programs Bureau via email at:

MO-LocalProgramsBureau@dot.ny.gov. If the Sponsor has concerns with an apparent low bidder, documentation supporting the concerns should be provided to NYSDOT.

14.4.3 Reasonableness Justification

When the apparent low bid is more than 15% higher or lower than the Engineers Estimate a reasonable justification is to be included in the bid analysis. Where the bid is 15% higher, the justification should focus on notable differences between the low bid and Engineer's Estimate for specific items and should discuss the apparent reasons such differences exist and any inherent risks. Where lower, the justification should focus on the experience of the apparent low bidder and its ability to complete the contract according to 9 NYCRR 4.170. If it is determined that

changes to the Engineer's Estimate would be appropriate based on bid analysis findings, provide descriptions of the revisions to prices for each item that is revised and a revised total of the Engineer's Estimate. All revision descriptions must include dollar amounts and not general statements.

A reasonableness justification shall include all of the following:

1. Consider the structural assessment review performed by the structural designer, if applicable. Justify if the determination does not coincide with the "recommendation to award" by the structural designer.
2. Determine whether the contract can be divided into smaller segments or stages of construction, combined with work in a larger contract, or if there are changes in the contract requirements that can be made to reduce the cost of work or produce more competition.
3. Determine whether a contract is essential and whether the delay resulting from canceling and re-letting would not be in the best public interest. Contracts considered essential include, but are not necessarily limited to safety contracts, which are to correct hazardous conditions to the traveling public, emergency repairs or replacement of damaged facilities.
4. Determine whether a timely award is required to complete staged construction, order materials, coordinate with and to allow other contracts (including other governmental and private contracts) to proceed, meet commitments made by the Sponsor, or to complete a facility in its entirety.
5. Determine if a delay would result in a substantial impact on the contract completion date or extend the contract beyond the contract completion date, over the winter and into the next construction season, thereby increasing the contract cost.
6. Determine whether the general location of the contract is saturated with similar types of construction contracts, thus tending to reduce competition.
7. Determine whether a shortage of construction labor, equipment or specialty capability and experience exists in the contract area, resulting in a general increase in bid prices.
8. Make a recommendation as to whether to award the contract.

14.4.4 Single Bid Analysis

For all contracts where only one bid has been received, the Sponsor should ascertain the potential for increased bidding if the contract were rebid, by examining the list of plan buyers for other potential bidders. Potential bidders should be contacted for their reasons for not bidding. Based on such discussion, determine whether revisions to the contract requirements could result in lower bids through increased competition or clarification of ambiguities. The Sponsor should determine whether the contract is essential and the potential for increased bidding if the contract were to be rebid. The Sponsor will provide the RLPL with the analysis and their determination on how they plan to proceed. The RLPL will review the analysis and provide the Sponsor with an

acknowledgment and what steps are necessary. If the Sponsor has proposed to rebid the project, then the RLPL must be advised and concur with the process. The Sponsor will need to provide modified contract bid documents as outlined in LPM Chapter 12 before receiving authorization to re-advertise the project. If the Sponsor has proposed to not rebid based on their analysis and concurrence with the RLPL, the Sponsor will proceed with the award process.

14.4.5 Rejection of All Bids

It may be necessary to reject all bids. Reasons to reject all bids are:

- Inadequate competition due to a limited number of bidders,
- High bids due to unclear requirements,
- Bids where additional costs could not be justified; or
- Other circumstances such as permits not being received.

A written discussion provided to the RLPL should include reasons why the Sponsor believes that they will receive better bids if the contract is re-let, or what changes will be made to secure more competitive bid prices, such as the bidding environment or time of the year when the job will be let. If after consultation and written concurrence with NYSDOT, all bids are rejected by the Sponsor, the Sponsor must notify all bidders.

14.4.6 Bidder Error

Occasionally a bidder will inadvertently err so severely that it is not reasonable to expect contract fulfillment. **General Municipal Law 103(11)** "Advertising for bids; letting of contracts; criminal conspiracies" sets forth requirements to excuse a bidder for an error in bidding and to proceed to the next lowest responsible bidder:

Bid mistake, public projects. (a) In all contracts governed by this section, where a unilateral error or mistake is discovered in a bid, such bid may be withdrawn after a showing of the following: (1) the mistake is known or made known to the awarding officer, board or agency prior to the awarding of the contract or within three days after the opening of the bid, whichever period is shorter; and (2) the price bid was based on an error of such magnitude that enforcement would be unconscionable; and (3) the bid was submitted in good faith and the bidder submits credible evidence that the mistake was a clerical error as opposed to a judgment error; and (4) the error in the bid is actually due to an unintentional and substantial arithmetic error or an unintentional omission of a substantial quantity of work, labor, material, goods or services made directly in the compilation of the bid, which unintentional arithmetic error or unintentional omission can be clearly shown by objective evidence drawn from inspection of the original work paper, documents or materials used in the preparation of the bid sought to be withdrawn; and (5) it is possible to place the public agency, board, officer or subdivision in status quo ante. (b) Unless otherwise required by law, the sole remedy for a bid mistake in accordance with this section shall be withdrawal of that bid and the return of the bid bond or other security, if any, to the bidder.

Thereafter, the awarding officer, board or agency may, in its discretion, award the contract to the next lowest responsible bidder or rebid the contract. Any amendment to or reformation of a bid or a contract to rectify such an error or mistake therein is strictly prohibited.

14.4.7 Move to Second Bidder

On occasion, the Sponsor will proceed to the second bidder. These occasions are:

- Bidder Error as noted in [Section 14.4.6](#).
- Verified documentation determining that the apparent low bidder is not a 'responsible bidder'.
- Documented justification of objection to the apparent low bidder by Sponsor.
- Failure of the apparent low bidder to provide adequate documentation to a Good Faith Effort per Standard Specification §102-12.
- Failure of the apparent low bidder to provide adequate justification to a significantly unbalanced bid proposal.
- Failure of the apparent low bidder to be registered with NYS Department of Labor prior to submitting a bid.
- Failure of the apparent low bidder to submit the required Bidder's List (i.e., information regarding Subcontractors who provided quotes prior to letting), [Appendix 12-11](#), with their bid.
- The apparent Low Bidder has been deemed non-responsive due to failure to submit a complete DBE/MBE/WBE/SDVOB Participation Package and/or sufficient Good Faith Efforts.

If the Sponsor moves to the apparent second low bidder, the Sponsor must provide the justification to the RLPL. Once the RLPL has concurred, the Sponsor will complete the bidder responsibility and analysis ([Sections 14.4.1](#) through [14.4.1.3](#)) for the second bidder. Documentation concurring with the move to the second bidder should be provided with the Award package.

14.5 PRE-AWARD CIVIL RIGHTS RESPONSIBILITIES

The Sponsor must monitor and report on the contract's DBE/MBE/WBE/SDVOB participation. There are three distinct stages of DBE/MBE/WBE/SDVOB participation: goals, commitments, and attainments. Goals are established prior to letting in the contract documents as a percentage of the contract bid price. After contract letting, the goal is expressed as a dollar amount. During the bid process, the bidder provided their DBE Participation Package (i.e., [Appendix 12-10, Form AAP 14LL Summary of Federal DBE Commitments and Bid Requirements](#), DBE confirmations (i.e., AAP 20, AAP 22, or AAP 23 depending on work category) and good faith

efforts (if required). For MBE/WBE/SDVOB, the bidder submits their complete MBE/WBE/SDVOB Participation Package within 10 days after letting. After the contract award, attainment is measured after completion of the work in dollars paid to certified DBE/MBE/WBE/SDVOBs.

To comply with Civil Rights requirements, NYSDOT utilizes the Civil Rights monitoring and reporting software, Equitable Business Opportunity Solutions (EBO). It is the Sponsor's responsibility during pre-award to confirm that the apparent low bidder has committed to meeting the DBE/MBE/WBE/SDVOB participation goal(s) or has demonstrated good faith efforts to do so. If the apparent low bidder has not met the goal, a review of good faith efforts (GFE) and concurrence from the RLPL and NYSDOT's Main Office Local Programs Bureau is required. If the apparent low bidder fails to provide sufficient DBE commitments to meet the goal and/or provide sufficient GFE with their bid or fails to provide sufficient MBE/WBE/SDVOB commitments and/or good faith efforts, the Sponsor can deem them non-responsive. If the low bidder is deemed non-responsive, and believes they have good cause, they have the option to request an Administrative Reconsideration within 5 calendar days of the determination. If an Administrative Reconsideration deems the bidder as non-responsive, the Sponsor can move to the second low bidder. The implementation of a Sponsor's Administrative Reconsideration process is required under 49 CFR 26.53(d).

Sponsor is responsible for confirming apparent low bidder's commitment to DBE participation goal.

When a bidder requests an Administrative Reconsideration, the following steps should be taken:

1. The bidder will request in writing an Administrative Reconsideration within 5 calendar days of the determination of being non-responsive.
2. The bidder will meet in person with the Sponsor's reconsideration official concerning the issue of whether the bidder met the goal or made adequate good faith efforts to do so.
3. The decision on reconsideration must be made by an official who did not take part in the original determination that the bidder failed to meet the goal or make adequate good faith efforts to do so.
4. The bidder will be given the opportunity to provide argument or written documentation of Good Faith Efforts made prior to the letting.
5. The Sponsor will send a written decision on reconsideration, explaining the basis for finding that the bidder did or did not meet the goal or make adequate good faith efforts to do so at the time of letting.

Sponsors should note that in accordance with [NYSDOT Standard Specifications §105-21 Civil Rights Monitoring and Reporting](#), the Contractor must submit timely, accurate and complete data using EBO.

14.5.1 Participation Package

Review of the low bidder's DBE Participation Package is required during pre-award once the low bidder has been identified. Prior to verification of the bids, the Sponsor will conduct a preliminary review of the apparent low bidder's DBE Participation for completeness. The Sponsor will ensure that DBE confirmations (i.e., AAP 20, AAP 22, or AAP 23 depending on work category) were received for each DBE shown on [Appendix 12-10, Form AAP 14LL Summary of Federal DBE Commitments and Bid Requirements](#), and that the information is complete (i.e., scope of work, \$ amounts, and signatures). If the DBE Commitments do not meet the goal, the Sponsor will verify that the bidder submitted good faith efforts. If the apparent low bidder's DBE Participation Package is incomplete, their bid will be rejected as informal and the second low bidder's DBE Participation Package will be reviewed for completeness. Once the apparent low bidder's DBE Participation Package has been deemed complete, the bids can be verified.

For 100% State funded contracts, after verification of bids, the Sponsor shall notify the low bidder to submit their MBE/WBE/SDVOB Participation Package with a deadline of 10 calendar days after letting.

The following information must be reviewed by the Sponsor to determine whether the low bidder was responsive in the submittal of their DBE/MBE/WBE/SDVOB Participation Package with their bid:

- All proposed DBEs shown in the low bidder's commitments are listed in the [New York State Unified Certification Program \(UCP\) Directory](#); all M/WBEs are listed in the directory of certified firms on the [Empire State Development](#) website; and all SDVOBs are listed in the directory of certified firms on the [NYS Office of General Services](#) website.
- All proposed DBE/MBE/WBE/SDVOBs are listed in the directories to perform the work that they are being proposed to perform (NOTE: The NAICS codes and/or "Certified Business Description" should be reviewed against the proposed work. Do not use the NYSDOT Work codes as not all certifying agencies use NYSDOT work codes.)
- All proposed DBE/MBE/WBE/SDVOB participation is identified with the correct work type such as construction, material supplier, professional services, etc.
- A completed [AAP 20 DBE Subcontractor / Professional Service / Work Service Commitments/Confirmation](#) form was submitted with the bid for each proposed DBE Subcontractor, Professional Service, and Work Service as part of the DBE Participation Package; this form can be found at [NYSDOT's Office of Construction – Forms](#).
- A completed [AAP 22 DBE Material Commitments/Confirmation](#) form was submitted with the bid for each proposed DBE Manufacturer, Fabricator, Material Supplier, Distributor, and Broker as part of the DBE Participation Package; this form can be found at [NYSDOT's Office of Construction – Forms](#). The Sponsor shall verify the appropriate work category (and associated credit), as shown on the AAP 14LL, is correct based on the responses to questions on the AAP 22.

- A completed **AAP 23 DBE Trucking Commitment Information** form was submitted with the bid for each proposed DBE Trucking Firm as part of the DBE participation Package; this form can be found at **NYSDOT's Office of Construction - Forms**. The Sponsor shall ensure that **no** truck brokering or multi-tier trucking is being proposed.

14.5.2 Good Faith Efforts (GFE)

If the apparent low bidder does not have sufficient DBE/MBE/WBE/SDVOB commitments to meet the DBE/MBE/WBE/SDVOB goal(s), the Sponsor will evaluate the good faith efforts the low bidder made to obtain DBE/MBE/WBE/SDVOB participation to determine if the efforts are sufficient enough to recommend award of the contract.

The Sponsor shall reference NYSDOT Standard Specifications §102-12H. *Good Faith Efforts* and good faith effort guides at **NYSDOT's Office of Construction - Forms** to determine if the good faith efforts are sufficient.

The GFE supporting documentation includes, but is not limited to, the following:

- **Form AAP 10 DBE/MBE/WBE/SDVOB Solicitation Log.**
- Copies of correspondence, faxes, and e-mails sent to prospective DBE/MBE/WBE/SDVOBs.
- Copies of advertisements (e.g., newspaper ads).
- Copies of quotes from non-selected DBE/MBE/WBE/SDVOBs as well as quotes from the selected non-DBE/MBE/WBE/SDVOBs.

At a minimum, the Sponsor should perform the following analysis for GFE and provide a summary when transmitting to the RLPL:

- Check the DBE/MBE/WBE/SDVOB certification status of each firm contacted.
- If the firm cannot be found in the Directory, confirm the certification status with the certifying agency responsible for the firm. Never accept copies, faxes, or scans of certification letters.

Compare the work in the contract against:

- Work for which DBE/MBE/WBE/SDVOBs were solicited.
- Work that the DBE/MBE/WBE/SDVOBs are listed to perform.
- Compare the location of each DBE/MBE/WBE/SDVOB firm to ensure an exhaustive search was performed for each item, within an appropriate radius of the project in accordance with **NYSDOT Standard Specification §102-12H. *Good Faith Efforts***.

- Identify available participation opportunities and compare them against the type of work solicited.
- Ensure all types of DBE/MBE/WBE/SDVOB firms were solicited including, material supply, manufacturing, fabrication, professional services, etc.
- Cross-reference letters, faxes, [AAP 10](#), etc.

Compare the DBE's price against:

- Engineer's Estimate
- Bid price
- Weighted Average Item Price Report data

Where does the DBE's price fall in comparison to all the above:

- Contact a sample of the firms listed on the AAP 10 to verify solicitation effort stated in the solicitation log and other documents:
 - When contacted.
 - By whom.
 - By what method(s).
 - How many times.
 - For what work.
 - Was quote/bid submitted.
 - Were plans provided/made available – how and when?
- Low bidder's follow-through.
- Compare all efforts against [Appendix A, Standard Clauses for NYS Contracts to 49 CFR 26](#).

The Sponsor should discuss any document deficiencies with the apparent low bidder. If the Sponsor is satisfied, the documentation is provided to the RLPL for concurrence with the Office of Civil Rights.

If the Sponsor determines that the low bidder did not conduct adequate GFE, it should present its recommendation with this analysis and supporting documentation to its management as well as to the RLPL in a narrative which should include:

- State the specific non-compliance actions.
- Cite the specification and regulation for each non-compliance action or class of actions.

- Provide calculations of the amount achieved toward the DBE/MBE/WBE/SDVOB goal and the difference.
- Provide an analysis of the feasibility of the DBE/MBE/WBE/SDVOB goal. For Federally funded contracts, compare the DBE commitments made by the other bidders.
- Provide a timeline or chronology of events.
- Calculations of the difference between the first and second low bidders.
- Any other relevant information.

Once the Sponsor determines that the GFE is adequate, they will forward the GFE documentation to the RLPL for concurrence by NYSDOT's Main Office of Diversity and Opportunity. Once NYSDOT's review is complete, the Sponsor shall notify the low bidder that their DBE/MBE/WBE/SDVOB Participation Plan has been accepted and to input their DBE/MBE/WBE/SDVOB commitments (exactly as shown in their bid) into EBO and the Sponsor can proceed with its award process.

The Sponsor shall not award the project to the apparent low bidder until concurrence is received from NYSDOT of both the GFE and Award Package. Notice to Proceed issued by the Sponsor to the apparent low bidder prior to NYSDOT issuing Authorization to Proceed without NYSDOT review and concurrence may result in a loss of federal aid.

The Sponsor shall not award the project until concurrence is received from NYSDOT of both the GFE and Award Package.

The Sponsor must follow its administrative process and document its steps and actions. If it is determined that the low bidder did not conduct adequate GFE, the Sponsor may deem the low bidder as non-responsive. The low bidder has the option to request an Administrative Reconsideration. If the Administrative Reconsideration process determines the low bidder to be non-responsive, the Sponsor can request concurrence from the RLPL to award to the second low bidder who has successfully met the DBE goal or has submitted sufficient GFE.

The DBE/MBE/WBE/SDVOB goal is in effect for the duration of the contract. If the DBE/MBE/WBE/SDVOB goal is not met at the time of award and was awarded based on an approved GFE prior to advertisement, then the Sponsor must ensure Good Faith Efforts are made throughout the life of the contract. The contractor shall periodically review items that are available for DBE/MBE/WBE/SDVOB participation, typically before the beginning of a new construction season and when significant new items of work are added to the contract and conduct additional DBE/MBE/WBE/SDVOB solicitation and document those efforts. The Sponsor will continue collecting the additional GFE documentation from the contractor throughout the duration of the contract, or until the DBE/MBE/WBE/SDVOB goal is met.

The DBE/MBE/WBE/SDVOB Attainment Report from EBO shall be submitted with the Sponsor's request(s) for reimbursement. See **LPM Chapter 5** for reimbursement instructions.

14.5.3 Equitable Business Opportunity (EBO)

Project entry into EBO is required during pre-award once the low bidder has been identified and their DBE Participation Package has been deemed acceptable. The following steps are to be completed before the submittal of the Award Package to the RLPL and before award of the contract:

1. After the identification of the apparent low bidder and acceptance of their DBE/MBE/WBE/SDVOB Participation Package, the Sponsor will immediately submit the "Contract Template" (contract's items, quantities, low bid prices, and apparent low bidder information) to the RLPL, utilizing the **FA DBE EBO Template Construction** and confirm the correct Units of Measure for a seamless upload into the Civil Rights reporting software, EBO.
2. The RLPL will perform a Quality Assurance review on the Contract Template to determine if the header information has been completed and that the units of measure being used are correct. If there are errors, the RLPL will return the template to the Sponsor for correction. The RLPL will submit the completed Contract Template via email to localprograms.ebo@dot.ny.gov for upload into EBO.
3. Main Office Local Programs Bureau will notify the RLPL who will then notify the Sponsor that the Template has been successfully loaded into EBO.
4. The Sponsor will notify the apparent low bidder that the contract has been initialized in EBO.
5. The low bidder must enter their DBE commitments (exactly as shown in their bid) into EBO within five (5) calendar days from notification that their DBE Participation Package has been deemed acceptable by the Sponsor. For Non-Federal-Aid contracts, within 10 calendar days from letting, the Low Bidder shall submit a complete MBE/WBE/SDVOB Participation Package into EBO.
6. The Sponsor and RLPL must review the pre-award participation data in EBO to confirm that the information has been input correctly. Once confirmed, each DBE/MBE/WBE/SDVOB shall acknowledge the commitment in EBO within 10 calendar (10) days.
7. The Sponsor must notify the RLPL when the DBE/MBE/WBE/SDVOBs have completed the commitment in EBO.
8. The Sponsor will provide to the RLPL a copy of the Award Notice to the Contractor and the RLPL will notify the Local Programs EBO mailbox the Award date.

14.6 BRIDGE CONSTRUCTION UNIT COST DATA (IF APPLICABLE)

Annually, all states are required to submit to Federal Highway Administration (FHWA) bridge construction unit costs for all new and replacement bridges constructed using any federal funds. The FHWA requirement does not pertain to bridge rehabilitations, superstructure replacements, or pedestrian bridges.

The Sponsor must provide to the RLPL an itemized bridge share of the construction costs (as submitted by the successful bidder). A separate itemized share is required for each bridge, and only bridge items shall be included. The Engineer's Estimate and other bidder's unit costs should not be included. This data must be provided to NYSDOT when the contract is awarded.

The Bridge Construction Unit Cost Datasheet (see [Appendix 14-2](#) for a sample) must be provided to the RLPL, who forwards them to NYSDOT's Main Office. The collected data is provided to FHWA for their program analysis.

14.7 AWARD PACKAGE

NYSDOT delegated oversight authority by FHWA, is responsible for the construction of all Federal-aid projects. When the project is not on the National Highway System or State Highway System, NYSDOT is not relieved of overall project responsibility, thus the Sponsor must submit a Contract Award Package to the RLPL requesting a Concurrence in Award letter.

The following items are to be included in the Contract Award Package (see [Appendix 14-3](#) for the Contract Award Checklist):

- Proof of Advertising which consists of the ad from the Contract Reporter, local newspaper, and copies of any other advertisements placed, whether in hard copy or electronic media. (see [LPM Section 14.2 Advertising](#)).
- Copy of all amendments issued:
 - Amendments distribution records showing that all amendments were sent to all plan buyers.
 - A record showing receipt of amendments by plan holders/bidders.
- Copy of bid bond and/or bid deposit.
- Bid Opening, Verification, and Sponsor Recommendation Letter (see [Appendix 14-1](#)) and attachments.
- Description from the Sponsor concerning how it intends to inspect and provide quality assurance and quality control, as noted in the approved CMP.
- Bid analysis completed by Sponsor (see [Section 14.4.2](#)).

- Completed CONR80LL Bidder's List (See Appendix 12-11)
- Certification of apparent low bidder responsibility (see Section 14.4.1 Bidder Responsibility).
- Copy of the confirmation of an approved CCA-2 New York State Uniform Contracting Questionnaire.
- Signed Disclosure of Lobbying Activities Forms (see Appendix 12-1.7).
- Signed Non-Collusive Bidding Certification (see Appendix 12-1.14).
- Copy of Certificate of Insurances – Workers Compensation and Disability Benefits (see LPM Chapter 12.3.8).
- Copy of notarized and signed proposal of the verified apparent low bidder.
- Documentation demonstrating that the low bidder met their responsibility for Equal Employment Opportunity (EEO) Workforce Participation Plan (AAP 35).
- DBE participation documented on AAP 14LL (Appendix 12-10) – EBO utilized, and DBEs have acknowledged work. The Concurrence of proposed DBE/MBE/WBE/SDVOB participation by the RLPL prior to award.
- GFE documentation, if the DBE goal appears - the Sponsor cannot award the contract until NYSDOT's Office of Diversity and Opportunity concurs with the GFE.
- DBE/MBE/WBE/SDVOB Material Supplier Commitment Information (AAP 22) if DBE/MBE/WBE/SDVOB material suppliers are utilized.
- DBE/MBE/WBE/SDVOB Trucking Commitment Information (AAP 23), if DBE/MBE/WBE/SDVOB trucking firms are utilized.
- Identification of Affirmative Action Representatives in EBO (not required for suppliers)
- Documentation demonstrating that the low bidder met their responsibility for DBE/MBE/WBE/SDVOB participation when goals were established. See NYSDOT Contract Administration Manual (CAM) §102-12 and LPM Chapter 13 Civil Rights Requirements.
- Bridge Construction Unit Cost Data (required for all projects with new or replacement bridges, (see Appendix 14-2).

Sponsors must submit the Award Package for review prior to the award of the contract in order for the RLPL to conduct their review. RLPL will review and issue a Concurrence in Award letter when all questions and comments have been addressed.

14.8 CONTRACT AWARD

Federal aid contracts shall be awarded only based on the lowest responsive bid submitted by a bidder meeting the criteria of responsibility established by NYSDOT, in accordance with

“Licensing and qualification of contractors per **23 CFR 635.114(a)**. If the award is not completed within 45 days, the contractor may withdraw their bid from consideration as noted in **140 of the State Finance Law** and **Section 105 NYS General Municipal Law**.

Contracts are awarded based on the lowest responsible bidder.

The Sponsor must certify in writing that all items in the award documentation package have been addressed and request a Concurrence in Award letter from the RLPL. In support of the Sponsor’s request, the Sponsor must summarize the results of their bid analysis and highlight any irregularities that may have been identified using the Tabulation of Bids (see **Appendix 14-5**). The summary must include the bid tabulations of the project, showing bid item details for at least the low three acceptable bids and the total amounts of all other acceptable bids. After receiving the Concurrence in Award letter from the RLPL, the Sponsor may award the contract, provide notification of the award and a copy of the signed executed contract that includes the Faithful Performance Bond and the Labor and Material Bond to the RLPL, and schedule a Pre-Construction Kick-off meeting to which the RLPL needs to attend.

For projects on the NHS System, Sponsors must contact the RLPL for additional requirements. See **PDM Chapter 4, Table 4-3**. Concurrence in the award is a prerequisite to federal participation in construction costs and, unless specifically stated otherwise, constitutes authority to proceed with construction **23 CFR 635.114(b)**. The Concurrence in Award Letter must be retained as part of the project record by both the Sponsor and the RLPL.

14.9 REFERENCES, CHAPTER 14 ADVERTISEMENT, CONTRACT LETTING, AND AWARD

TITLE	LINK
FEDERAL LAWS & REGULATIONS	
23 CFR § 230, External Programs	https://www.govinfo.gov/content/pkg/CFR-2011-title23-vol1/xml/CFR-2011-title23-vol1-part230.xml
23 CFR § 635.104, Method of Construction	https://www.govinfo.gov/content/pkg/CFR-2011-title23-vol1/xml/CFR-2011-title23-vol1-sec635-104.xml
23 CFR § 635.112, Advertising for Bids and Proposals	https://www.govinfo.gov/content/pkg/CFR-2011-title23-vol1/xml/CFR-2011-title23-vol1-sec635-112.xml
23 CFR § 635.113(a), Bid Opening and Bid Tabulations	https://www.govinfo.gov/content/pkg/CFR-2011-title23-vol1/xml/CFR-2011-title23-vol1-sec635-113.xml
23 CFR § 635.114(a) and (b), Award of Concurrence	23 CFR 635.114(a)(b)
49 CFR § 26, Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs	https://www.govinfo.gov/content/pkg/CFR-2011-title49-vol1/xml/CFR-2011-title49-vol1-part26.xml
STATE AND GENERAL MUNICIPAL LAWS & REGULATIONS	
9 New York State Code, Rules, and Regulations (NYCRR) § 4.170, Executive Order No. 170, Establishing Uniform Guidelines for Determining the Responsibility of Bidders	https://govt.westlaw.com/nycrr/Document/I4efcdfd1cd1711dda432a117e6e0f345?viewType=FullText&originationContext=documenttoc&transitionType=CategoryPageItem&contextData=(sc.Default)&bhcp=1
New York State Finance Law, Chapter 56, Article 9 § 140, Disposition of Deposit Accompanying Bid	https://www.nysenate.gov/legislation/laws/STF/140
New York State Finance Law, Chapter 56, Article 11, State Purchasing	https://www.nysenate.gov/legislation/laws/STF/A11
New York State General Municipal Law, Chapter 24, Article 5-A § 103, Advertising for Bids and Offers; Letting of Contracts; Criminal Conspiracies	https://www.nysenate.gov/legislation/laws/GMU/103

New York State General Municipal Law, Chapter 24, Article 5-A § 103-11, Advertising for Bids and Offers; Letting of Contracts; Criminal Conspiracies	https://www.nysenate.gov/legislation/laws/GMU/103
New York State General Municipal Law, Chapter 24, Article 5-A § 105, Disposition of Deposit Accompanying Bid	https://www.nysenate.gov/legislation/laws/GMU/105
New York State Office of General Services, New York State Procurement Guidelines	https://ogs.ny.gov/system/files/documents/2024/12/nys-procurement-guidelines.pdf

NYSDOT POLICIES, PROCEDURES, & GUIDANCE

NYSDOT, Contract Administration Manual (CAM) § 102-12, DBE/MBE/WBE/SDVOB Participation	https://www.dot.ny.gov/main/business-center/contractors/construction-division/construction-repository/CAM_Sect102-12.pdf
NYSDOT, Doing Business with NYSDOT>Construction Contractors	https://www.dot.ny.gov/bids-and-lettings/construction-contractors/general-info
NYSDOT, Federal Aid EBO Template (DBE)	https://www.dot.ny.gov/divisions/operating/opdm/local-programs-bureau/locally-administered-federal-aid-projects/civil-rights
NYSDOT, Local Project Manual (LPM), Chapter 5, Accounting and Reimbursement Procedures	https://www.dot.ny.gov/portal/page/portal/plafap/view-document?id=1402
NYSDOT, Local Project Manual (LPM), Chapter 12, Construction Contract Requirements	https://www.dot.ny.gov/portal/page/portal/plafap/view-document?id=1435
NYSDOT, Local Project Manual (LPM), Chapter 13, Civil Rights Requirements	https://www.dot.ny.gov/portal/page/portal/plafap/view-document?id=1423
NYSDOT, Local Project Manual (LPM), Chapter 15, Administer Construction Contracts	https://www.dot.ny.gov/portal/page/portal/plafap/view-document?id=1415
NYSDOT, Office of Construction, Forms. (Forms AAP 10, AAP 14, AAP 20, AAP 22, AAP 23, AAP 35 can be found here)	https://www.dot.ny.gov/main/business-center/contractors/construction-division/forms-manuals-computer-applications-general-information/civil-rights
NYSDOT, Project Development Manual (PDM), Chapter 4, Exhibit 4-2, Project Design Phases	https://www.dot.ny.gov/divisions/engineering/design/dgab/pdm

NYSDOT, Standard Specifications, § 102-12, D/M/WBE Participation	https://www.dot.ny.gov/main/business-center/engineering/specifications/busi-e-standards-usc
NYSDOT, Standard Specifications, § 105-21, Civil Rights Monitoring and Reporting	https://www.dot.ny.gov/main/business-center/engineering/specifications/busi-e-standards-usc
NYSDOT, Weighted Average Item Price Report Data	https://www.dot.ny.gov/divisions/engineering/design/dgab/waipr

ADDITIONAL RESOURCES

AASHTOWare Project Preconstruction	https://www.aashtowareproject.org/apr-precon
New York State Empire State Development Search Directory	https://ny.newnycontracts.com/FrontEnd/searchcertifieddirectory.asp
New York State Comptroller, For Profit Construction Questionnaire (CCA-2)	https://www.osc.state.ny.us/state-vendors/vendrep/profit-construction-questionnaire-cca-2
New York State Contract Reporter (NYSCR)	https://www.nyscr.ny.gov/
Registration Website	https://www.nyscr.ny.gov/register.cfm
Contact Us Page	https://www.nyscr.ny.gov/contactUs.cfm
New York State Department of Labor, Debarment List	https://apps.labor.ny.gov/EDList/searchPage.do
New York State Department of Labor, Contractor/Subcontractor Registry	https://dol.ny.gov/public-work-contractor-and-subcontractor-registry-dashboard
New York State Department of State, Existing Corporations and Businesses	https://dos.ny.gov/existing-corporations-and-businesses
New York State Empire State Development (ESD), Procurement Assistance Program, Contact Us	https://esd.ny.gov/procurement-assistance-program
New York State Office of General Services (Service-Disabled Veteran’s Business) Search	https://sdves.ogs.ny.gov/business-search
United States Department of Labor, Occupational Safety and Health Administration, Establishment Search (safety violation search)	https://www.osha.gov/ords/imis/establishment.html

**United States Department of Labor,
Office of Federal Contract Compliance
Programs, OFCCP Debarred Companies:**
List of Debarred, Suspended, or Voluntarily
Excluded Firms Ineligible for Federal Aid

<https://sam.gov/content/entity-information>

**New York State Unified Certification
Program (UCP) Directory**

<https://nysucp.newnycontracts.com/>

NEW YORK STATE VENDOR RESPONSIBILITY QUESTIONNAIRE FOR-PROFIT CONSTRUCTION (CCA-2)

You have selected the For-Profit Construction questionnaire, commonly known as the “CCA-2,” which may be printed and completed in this format or, **for your convenience, may be completed online using the [New York State VendRep System](#).**

COMPLETION & CERTIFICATION

The person(s) completing the questionnaire must be knowledgeable about the vendor’s business and operations. An owner or owner’s official representative authorized to legally bind the Reporting Entity, must certify the truth of the questionnaire answers.

NEW YORK STATE VENDOR IDENTIFICATION NUMBER (VENDOR ID)

The Vendor ID is a ten-digit identifier issued by New York State when the vendor is registered on the Statewide Vendor File. This number must now be included on the questionnaire. If the business entity has not obtained a Vendor ID, contact the IT Service Desk at ITServiceDesk@osc.state.ny.us or call 866-370-4672.

DEFINITIONS

All underlined terms are defined in the “New York State Vendor Responsibility Definitions List,” found at <http://www.osc.state.ny.us/vendrep/documents/questionnaire/definitions.pdf>. These terms may not have their ordinary, common, or traditional meanings. Each vendor must read the respective definitions for any and all underlined terms. By submitting this questionnaire, the vendor agrees to be bound by the terms as defined in the "New York State Vendor Responsibility Definitions List" existing at the time of certification.

RESPONSES

Every question must be answered fully. Each response must provide all relevant information to appropriately explain the answer. If you have concerns as to the legal requirements behind your answers, please seek clarification from your counsel. However, information regarding a determination or finding made in error which was subsequently corrected or overturned, and/or was withdrawn by the issuing government entity, is not required to be identified. Individuals and Sole Proprietors may use a Social Security Number but are encouraged to obtain and use a federal Employer Identification Number (EIN).

**NEW YORK STATE VENDOR RESPONSIBILITY QUESTIONNAIRE
FOR-PROFIT CONSTRUCTION (CCA-2)**

BUSINESS ENTITY INFORMATION				
<u>Legal Business Name</u>		<u>EIN</u> _____		
Address of the <u>Principal Place of Business</u> (street, city, state, zip code) NO P.O. Boxes		<u>New York State Vendor Identification Number</u>		
		Telephone ext.	Fax	
		Website (include all)		
Authorized Contact for this Questionnaire				
Name		Telephone ext.	Fax	
Title		Email		
Additional <u>Business Entity</u> Identities: If applicable, list any other <u>DBA</u> , <u>Trade Name</u> , <u>Former Name</u> , <u>Other Identity</u> , or <u>EIN</u> used in the last five (5) years, the state or county where filed and the status (active or inactive).				
Type	Name	EIN	State or County where filed	Status

I. BUSINESS CHARACTERISTICS	
1.0 <u>Business Entity</u> Type – Check appropriate box and provide additional information:	
a) <input type="checkbox"/> <u>Corporation</u> (including <u>PC</u>)	Date of Incorporation
b) <input type="checkbox"/> <u>Limited Liability Company</u> (<u>LLC</u> or <u>PLLC</u>)	Date Organized
c) <input type="checkbox"/> <u>Limited Liability Partnership</u>	Date of Registration
d) <input type="checkbox"/> <u>Limited Partnership</u>	Date Established
e) <input type="checkbox"/> <u>General Partnership</u>	Date Established County (if formed in NYS)
f) <input type="checkbox"/> <u>Sole Proprietor</u>	How many years in business?
g) <input type="checkbox"/> Other	Date Established
If Other, explain:	
1.0 Was the <u>Business Entity</u> formed in New York State? <input type="checkbox"/> Yes <input type="checkbox"/> No	
If “No,” indicate jurisdiction where the <u>Business Entity</u> was formed:	

NEW YORK STATE VENDOR RESPONSIBILITY QUESTIONNAIRE FOR-PROFIT CONSTRUCTION (CCA-2)

I. BUSINESS CHARACTERISTICS				
<input type="checkbox"/> United States	State			
<input type="checkbox"/> Other	Country			
1.2 Is the <u>Legal Business Entity</u> publicly traded?				<input type="checkbox"/> Yes <input type="checkbox"/> No
If "Yes," provide the <u>CIK code</u> or Ticker Symbol:				
1.3 Is the <u>Business Entity</u> currently <u>registered to do business in New York State</u> ?				<input type="checkbox"/> Yes <input type="checkbox"/> No
<i>Note: Select "Not Required" if the Business Entity is a Sole Proprietor or General Partnership</i>				<input type="checkbox"/> Not Required
If "No," explain why the <u>Business Entity</u> is not required to be <u>registered to do business in New York State</u> :				
1.4 Is the responding <u>Business Entity</u> a <u>Joint Venture</u> ? Note: If the submitting <u>Business Entity</u> is a <u>Joint Venture</u> , also submit a separate questionnaire for each <u>Business Entity</u> comprising the <u>Joint Venture</u> .				<input type="checkbox"/> Yes <input type="checkbox"/> No
1.5 If the <u>Business Entity's Principal Place of Business</u> is not in New York State, does the <u>Business Entity</u> <u>maintain</u> an office in New York State? <i>(Select "N/A" if <u>Principal Place of Business</u> is in New York State.)</i>				<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
If "Yes," provide the address and telephone number for one office located in New York State.				
1.6 Is the Business Entity a New York State certified <u>Minority-Owned Business Enterprise</u> , <u>Women-Owned Business Enterprise</u> , <u>Service-Disabled Veteran-Owned Business</u> , <u>New York State Small Business</u> , or federally certified <u>Disadvantaged Business Enterprise</u> ?				<input type="checkbox"/> Yes <input type="checkbox"/> No
If "Yes," check all that apply:				
<input type="checkbox"/> New York State certified <u>Minority-Owned Business Enterprise</u> (MBE)				
<input type="checkbox"/> New York State certified <u>Women-Owned Business Enterprise</u> (WBE)				
<input type="checkbox"/> New York State certified <u>Service-Disabled Veteran-Owned Business</u> (SDVOB)				
<input type="checkbox"/> <u>New York State Small Business</u>				
<input type="checkbox"/> Federally certified <u>Disadvantaged Business Enterprise</u> (DBE)				
1.7 Identify each person or Business Entity that is or has been within the past five (5) years, a Business Entity Official, or a <u>Principal Owner</u> of 5.0% or more of the Reporting Entity's shares; or one of the five largest shareholders, if applicable. <i>(Attach additional pages if necessary.)</i>				
<u>Joint Ventures</u> : Provide information for all firms involved.				
Each Business Entity identified as a Principal Owner must also submit a Vendor Responsibility Questionnaire.				
(Add additional sheets if necessary.) For each person, include name, title, date of birth, percentage of ownership, and employment status. For each Business Entity that is a Principal Owner, include name, address, EIN, and percentage of ownership.				
If there is no person or <u>Business Entity</u> that owns 5% or more of the Reporting Entity, check here: <input type="checkbox"/>				
Name <i>(For each person, include a middle initial)</i>	Title	Date of Birth	Percentage of ownership (Enter 0%, if not applicable)	Employment status with the firm

**NEW YORK STATE VENDOR RESPONSIBILITY QUESTIONNAIRE
FOR-PROFIT CONSTRUCTION (CCA-2)**

I. BUSINESS CHARACTERISTICS				
				<input type="checkbox"/> Current <input type="checkbox"/> Former <input type="checkbox"/> N/A
				<input type="checkbox"/> Current <input type="checkbox"/> Former <input type="checkbox"/> N/A
				<input type="checkbox"/> Current <input type="checkbox"/> Former <input type="checkbox"/> N/A
				<input type="checkbox"/> Current <input type="checkbox"/> Former <input type="checkbox"/> N/A
Name of <u>Each Business Entity</u> owning 5% or more of <u>Reporting Entity</u>	Address	EIN	Percentage Ownership	

II. AFFILIATE and JOINT VENTURE RELATIONSHIPS		
2.0 Are there any other <u>construction</u> -related firms in which, now or in the past five years, the submitting <u>Business Entity</u> or any of the individuals or business entities listed in question 1.7 either owned or owns 5.0% or more of the shares of, or was or is one of the five largest shareholders or a director, officer, partner, or proprietor of said other firm? If yes, identify below and if there is more than one, <i>attach additional pages with required information.</i>		<input type="checkbox"/> Yes <input type="checkbox"/> No
Firm/Company Name	Firm/Company EIN (If available)	Firm/Company's Primary Business Activity
Firm/Company Address		
Explain relationship with the firm and indicate percent of ownership, if applicable (enter N/A, if not applicable):		
Are there any shareholders, directors, officers, owners, partners or proprietors that the submitting <u>Business Entity</u> has in common with the disclosed firm(s)?		<input type="checkbox"/> Yes <input type="checkbox"/> No
Individual's Name <i>(Include middle initial)</i>	Position/Title with Firm/Company	

NEW YORK STATE VENDOR RESPONSIBILITY QUESTIONNAIRE FOR-PROFIT CONSTRUCTION (CCA-2)

II. AFFILIATE and JOINT VENTURE RELATIONSHIPS		
2.1 Does the <u>Business Entity</u> have any <u>construction-related affiliates</u> not identified in the response to question 2.0 above? If yes, identify below and if there is more than one, <i>attach additional pages with the required information.</i>		<input type="checkbox"/> Yes <input type="checkbox"/> No
Affiliate Name	Affiliate EIN (If available)	Affiliate's Primary Business Activity
Affiliate Address		
Explain relationship with the affiliate and indicate percent of ownership, if applicable (<i>enter N/A, if not applicable</i>):		
Are there any shareholders, directors, officers, owners, partners or proprietors that the submitting Business Entity has in common with the disclosed affiliate(s)?		<input type="checkbox"/> Yes <input type="checkbox"/> No
Individual's Name (<i>Include middle initial</i>)	Position/Title with Firm/Company	
2.2 Has the <u>Business Entity</u> participated in any <u>construction-related Joint Ventures</u> within the past three (3) years? If yes, identify below and if there is more than one, <i>attach additional pages with the required information.</i>		<input type="checkbox"/> Yes <input type="checkbox"/> No
Joint Venture Name	Joint Venture EIN (If available)	Identify parties to the Joint Venture

III. CONTRACT HISTORY	
3.0 Has the <u>Business Entity</u> completed any <u>construction</u> contracts?	<input type="checkbox"/> Yes <input type="checkbox"/> No
<i>If "Yes," list the ten most recent <u>construction</u> contracts the <u>Business Entity</u> has completed for <u>government</u> clients using Attachment A – Completed Construction Contracts, found at www.osc.state.ny.us/vendrep/documents/questionnaire/ac3294s.doc. At the <u>Business Entity</u>'s option, it may include <u>construction</u> contracts completed for private clients. If less than ten, include most recent subcontracts on projects up to that number.</i>	
3.1 Does the <u>Business Entity</u> currently have uncompleted <u>construction</u> contracts?	<input type="checkbox"/> Yes <input type="checkbox"/> No
<i>If "Yes," list all current uncompleted <u>construction</u> contracts for <u>government</u> clients by using Attachment B – Uncompleted Construction Contracts, found at www.osc.state.ny.us/vendrep/documents/questionnaire/ac3295s.doc. Note: Ongoing projects must be included. At the <u>Business Entity</u>'s option, it may include <u>construction</u> contracts uncompleted for private clients.</i>	

IV. INTEGRITY – CONTRACT BIDDING	
<i>Within the past five (5) years, has the <u>Business Entity</u>, an affiliate, or any predecessor company or entity:</i>	
4.0 Been <u>suspended</u> or <u>debarred</u> from any <u>government contracting process</u> or been <u>disqualified</u> on any government procurement?	<input type="checkbox"/> Yes <input type="checkbox"/> No
4.1 Been subject to a denial or revocation of a government prequalification?	<input type="checkbox"/> Yes <input type="checkbox"/> No
4.2 Had any bid rejected by a <u>government entity</u> for lack of qualifications, responsibility or because of the submission of an informal, non-responsive or incomplete bid?	<input type="checkbox"/> Yes <input type="checkbox"/> No
4.3 Had a proposed subcontract rejected by a <u>government entity</u> for lack of qualifications, responsibility or because of the submission of an informal, non-responsive or incomplete bid?	<input type="checkbox"/> Yes <input type="checkbox"/> No

NEW YORK STATE VENDOR RESPONSIBILITY QUESTIONNAIRE FOR-PROFIT CONSTRUCTION (CCA-2)

IV. INTEGRITY – CONTRACT BIDDING	
<i>Within the past five (5) years, has the Business Entity, an affiliate, or any predecessor company or entity:</i>	
4.4 Had a bid rejected on a <u>government contract</u> for failure to make <u>good faith efforts</u> on any <u>Minority-Owned Business Enterprise, Women-Owned Business Enterprise, Service-Disabled Veteran-Owned Business or Disadvantaged Business Enterprise</u> goal or <u>statutory affirmative action requirements</u> on a previously held contract?	<input type="checkbox"/> Yes <input type="checkbox"/> No
4.5 Agreed to a voluntary exclusion from bidding/contracting with a <u>government entity</u> ?	<input type="checkbox"/> Yes <input type="checkbox"/> No
4.6 Requested or been permitted to withdraw a bid submitted to a <u>government entity</u> or made any claim of an error on a bid submitted to a <u>government entity</u> ?	<input type="checkbox"/> Yes <input type="checkbox"/> No
<p><i>For each "Yes," provide an explanation of the issue(s), the <u>Business Entity, affiliate, predecessor company or entity</u> involved, the relationship to the submitting <u>Business Entity</u>, the <u>government entity</u> involved, project(s), relevant dates, any remedial or corrective action(s) taken and the current status of the issue(s). Provide answer(s) below or attach additional sheets with numbered responses to explain each "YES" response.</i></p>	

V. INTEGRITY – CONTRACT AWARD	
<i>Within the past five (5) years, has the Business Entity, an affiliate, or any predecessor company or entity:</i>	
5.0 Defaulted on or been <u>suspended</u> , cancelled or <u>terminated for cause</u> on any contract?	<input type="checkbox"/> Yes <input type="checkbox"/> No
5.1 Been subject to an <u>administrative proceeding</u> or civil action, including arbitration, seeking specific performance or restitution (except any disputed work proceeding) in connection with any <u>government contract</u> ?	<input type="checkbox"/> Yes <input type="checkbox"/> No
5.2 Entered into a formal monitoring agreement, integrity agreement, consent decree, or stipulation, settlement as specified by, or agreed to with, any <u>government entity</u> ?	<input type="checkbox"/> Yes <input type="checkbox"/> No
5.3 Had its surety called upon to complete any contract whether government or private sector?	<input type="checkbox"/> Yes <input type="checkbox"/> No
5.4 Forfeited all or part of a standby letter of credit in connection with any <u>government contract</u> ?	<input type="checkbox"/> Yes <input type="checkbox"/> No
<p><i>For each "Yes," provide an explanation of the issue(s), the <u>Business Entity, affiliate, predecessor company or entity</u> involved, the relationship to the submitting <u>Business Entity</u>, the <u>government entity/owners</u> involved, project(s), contract number(s), relevant dates, any remedial or corrective action(s) taken and the current status of the issue(s). Provide answer(s) below or attach additional sheets with numbered responses to explain each "YES" response.</i></p>	

VI. CERTIFICATIONS/LICENSES	
<i>Within the past five (5) years, has the Business Entity, an affiliate, or any predecessor company or entity:</i>	
6.0 Had a revocation or <u>suspension</u> of any business or professional permit and/or license?	<input type="checkbox"/> Yes <input type="checkbox"/> No
6.1 Had a denial, decertification, revocation or forfeiture of New York State certification of <u>Minority-Owned Business Enterprise, Women-Owned Business Enterprise, Service-Disabled Veteran-Owned Business</u> or a federal certification of <u>Disadvantaged Business Enterprise</u> status, for other than a change of ownership?	<input type="checkbox"/> Yes <input type="checkbox"/> No
<p><i>For each "Yes," provide an explanation of the issue(s), the <u>Business Entity affiliate, predecessor company or entity</u> involved, the relationship to the submitting <u>Business Entity</u>, the <u>government entity</u> involved, relevant dates, any remedial or corrective action(s) taken and the current status of the issue(s). Provide answer(s) below or attach additional sheets with numbered responses to explain each "YES" response.</i></p>	

**NEW YORK STATE VENDOR RESPONSIBILITY QUESTIONNAIRE
FOR-PROFIT CONSTRUCTION (CCA-2)**

VII. LEGAL PROCEEDINGS/GOVERNMENT INVESTIGATIONS	
<i>Within the past five (5) years, has the Business Entity, an affiliate, or any predecessor company or entity:</i>	
7.0 Been the subject of a criminal <u>investigation</u> , whether open or closed, or an indictment for any business-related conduct constituting a crime under local, state or <u>federal</u> law?	<input type="checkbox"/> Yes <input type="checkbox"/> No
7.1 Been the subject of: (i.) An indictment, grant of immunity, <u>judgment</u> or conviction (including entering into a plea bargain) for conduct constituting a crime; or (ii.) Any criminal <u>investigation</u> , felony indictment or conviction concerning the formation of, or any business association with, an allegedly false or fraudulent <u>Minority-Owned Business Enterprise</u> , <u>Women-Owned Business Enterprise</u> , Service-Disabled Veteran-Owned Business, or a <u>Disadvantaged Business Enterprise</u> ?	<input type="checkbox"/> Yes <input type="checkbox"/> No
7.2 Received any <u>OSHA</u> citation, which resulted in a final determination classified as <u>serious</u> or <u>willful</u> ?	<input type="checkbox"/> Yes <input type="checkbox"/> No
7.3 Had a <u>government entity</u> find a willful prevailing wage or supplemental payment violation?	<input type="checkbox"/> Yes <input type="checkbox"/> No
7.4 Had a New York State Labor Law violation deemed willful?	<input type="checkbox"/> Yes <input type="checkbox"/> No
7.5 Entered into a consent order, monitoring agreement or other type of oversight with the New York State Department of Environmental Conservation, or a <u>federal</u> , state or local government enforcement entity involving a violation of <u>federal</u> , state or local environmental laws?	<input type="checkbox"/> Yes <input type="checkbox"/> No
7.6 Other than previously disclosed, been the subject of any <u>citations</u> , notices or violation orders; a pending administrative hearing, proceeding or determination of a violation of: <ul style="list-style-type: none"> • <u>Federal</u>, state or local health laws, rules or regulations; • <u>Federal</u>, state or local environmental laws, rules or regulations; • Unemployment insurance or workers compensation coverage or <u>claim</u> requirements; • Any labor law or regulation, which was deemed willful; • Employee Retirement Income Security Act (ERISA); • <u>Federal</u>, state or local human rights laws; • <u>Federal</u>, state or local security laws; • <u>Federal, state, or local tax laws</u>? 	<input type="checkbox"/> Yes <input type="checkbox"/> No
<p><i>For each "Yes," provide an explanation of the issue(s), the <u>Business Entity, affiliate, predecessor company or entity</u> involved, the relationship to the submitting <u>Business Entity</u>, the <u>government entity</u> involved, relevant dates, any remedial or corrective action(s) taken and the current status of the issue(s). Provide answer(s) below or attach additional sheets with numbered responses to explain each "YES" response.</i></p> <p><i>Note: Information regarding a determination or finding made in error, which was subsequently corrected or overturned, and/or was withdrawn by the issuing government entity, is not required.</i></p>	

**NEW YORK STATE VENDOR RESPONSIBILITY QUESTIONNAIRE
FOR-PROFIT CONSTRUCTION (CCA-2)**

<p>VIII. LEADERSHIP INTEGRITY <i>If the Business Entity is a Joint Venture Entity, answer "N/A - Not Applicable" to questions in this section. Within the past five (5) years has any individual previously identified or any individual currently or formerly having the authority to sign, execute or approve bids, proposals, contracts or supporting documentation on behalf of the Business Entity with any government entity been:</i></p>	
8.0 <u>Sanctioned</u> relative to any business or professional permit and/or license?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
8.1 <u>Suspended, debarred or disqualified</u> from any <u>government contracting process</u> ?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
8.2 The subject of a criminal <u>investigation</u> , whether open or closed, or an indictment for any business-related conduct constituting a crime under local, state or <u>federal</u> law?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
8.3 Charged with a misdemeanor or felony, indicted, granted immunity, convicted of a crime or subject to a judgment for: (i.) Any business-related activity, including but not limited to theft, fraud, coercion, extortion, bribe or bribe-receiving, giving or accepting unlawful gratuities, immigration or tax fraud, racketeering, mail fraud, wire fraud, price-fixing or collusive bidding; or (ii.) Any crime, whether or not business-related, the underlying conduct of which related to truthfulness, including but not limited to the filing of false documents or false sworn statements, perjury or larceny	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
<p><i>For each "Yes," provide an explanation of the issue(s), the individual involved, the relationship to the submitting <u>Business Entity</u>, the <u>government entity</u> involved, relevant dates, any remedial or corrective action(s) taken and the current status of the issue(s). Provide answer(s) below or attach additional sheets with numbered responses to explain each "YES" response.</i></p>	

<p>IX. FINANCIAL AND ORGANIZATIONAL CAPACITY</p>	
9.0 Within the past five (5) years, has the <u>Business Entity</u> or any <u>affiliate</u> received any <u>formal unsatisfactory performance assessment(s)</u> from any <u>government entity</u> on any contract?	<input type="checkbox"/> Yes <input type="checkbox"/> No
<p><i>If "Yes," provide an explanation of the issue(s), the <u>Business Entity</u> or affiliate involved, the relationship to the submitting <u>Business Entity</u>, the <u>government entity</u> involved, relevant dates, any remedial or corrective action(s) taken and the current status of the issue(s). Provide answer below or attach additional sheets with numbered responses to explain the "Yes" response.</i></p>	
9.1 Within the past five (5) years, has the <u>Business Entity</u> or any <u>affiliate</u> had any <u>liquidated damages</u> assessed over \$25,000 for any reason, including failure to meet <u>Minority-Owned Business Enterprise, Women-Owned Business Enterprise, Service-Disabled Veteran-Owned Business, or Disadvantaged Business Enterprise goals</u> ?	<input type="checkbox"/> Yes <input type="checkbox"/> No
<p><i>If "Yes," provide an explanation of the issue(s), the name of the <u>Business Entity or affiliate</u> involved, the relationship to the submitting <u>Business Entity</u>, relevant dates, the contracting party involved, the amount assessed and the current status of the issue(s), and the balance of the assessment not yet paid. Provide answer below or attach additional sheets with numbered responses.</i></p>	
9.2 Within the past five (5) years, has the <u>Business Entity</u> or any <u>affiliate</u> had any <u>liens, claims or judgments</u> over \$25,000 filed against the <u>Business Entity</u> which remain undischarged or were unsatisfied for more than 90 days? (<i>Note: Including but not limited to tax warrants or liens. Do not include UCC filings.</i>)	<input type="checkbox"/> Yes <input type="checkbox"/> No

**NEW YORK STATE VENDOR RESPONSIBILITY QUESTIONNAIRE
FOR-PROFIT CONSTRUCTION (CCA-2)**

IX. FINANCIAL AND ORGANIZATIONAL CAPACITY		
<p><i>If "Yes," provide an explanation of the issue(s), the name of the <u>Business Entity or affiliate</u> involved, the relationship to the submitting <u>Business Entity</u>, relevant dates, the Lien holder or Claimants' name(s), the amount of the <u>lien(s)</u>, the current status of the issue(s), and the balance of the lien, claim or judgment not yet paid. Provide answer below or attach additional sheets with numbered responses.</i></p>		
9.3 In the last seven (7) years, has the <u>Business Entity</u> or any <u>affiliate</u> , or <u>official</u> initiated or been the subject of any bankruptcy proceedings, whether or not closed, or is any bankruptcy proceeding pending?		<input type="checkbox"/> Yes <input type="checkbox"/> No
<p><i>If "Yes," provide the name of the <u>Business Entity, affiliate or official</u> involved, the relationship to the submitting <u>Business Entity</u>, the bankruptcy chapter number, the court name and the docket number. Indicate the current status of the proceedings as "Initiated," "Pending" or "Closed." Provide answer below or attach additional sheets with numbered responses to explain the YES response.</i></p>		
9.4 What is the <u>Business Entity's</u> Bonding Capacity?		
a. Single Project	b. Aggregate (All Projects)	
9.5 List <u>Business Entity's</u> Gross Sales for the previous three (3) Fiscal Years:		
1st Year (Indicate year) Gross Sales	2nd Year (Indicate year) Gross Sales	3rd Year (Indicate year) Gross Sales
9.6 List <u>Business Entity's</u> Average Backlog for the previous three (3) fiscal years: (Estimated total value of uncompleted work on outstanding contracts)		
1st Year (Indicate year) Amount	2nd Year (Indicate year) Amount	3rd Year (Indicate year) Amount
9.7 Attach <u>Business Entity's</u> most recent annual <u>financial statement</u> and accompanying notes or complete Attachment C – Financial Information, found at www.osc.state.ny.us/vendrep/documents/questionnaire/ac3296s.xls . <i>(This information must be attached.)</i>		

X. FREEDOM OF INFORMATION LAW (FOIL)	
10.0 Indicate whether any information provided herein is believed to be exempt from disclosure under the Freedom of Information Law (FOIL). <i>Note: A determination of whether such information is exempt from FOIL will be made at the time of any request for disclosure under FOIL. Attach additional pages if necessary.</i>	<input type="checkbox"/> Yes <input type="checkbox"/> No
<p><i>If "Yes," indicate the question number(s) and explain the basis for the claim.</i></p>	

Authorizee

XI. AUTHORIZED CONTACT FOR THIS QUESTIONNAIRE		
Name	Telephone ext.	Fax
Title	Email	

**NEW YORK STATE VENDOR RESPONSIBILITY QUESTIONNAIRE
FOR-PROFIT CONSTRUCTION (CCA-2)**

Certification

The undersigned: (1) recognizes that this questionnaire is submitted for the express purpose of assisting New York State government entities (including the Office of the State Comptroller (OSC)) in making responsibility determinations regarding award or approval of a contract or subcontract and that such government entities will rely on information disclosed in the questionnaire in making responsibility determinations; (2) acknowledges that the New York State government entities and OSC may, in their discretion, by means which they may choose, verify the truth and accuracy of all statements made herein; and (3) acknowledges that intentional submission of false or misleading information may result in criminal penalties under State and/or federal law, as well as a finding of non-responsibility, contract suspension or contract termination.

It being acknowledged and agreed that all responses included in this questionnaire are to the knowledge, information and belief of the Business Entity, the undersigned certifies under penalties of perjury that they:

The undersigned certifies that he/she:

- are knowledgeable about the submitting Business Entity's business and operations;
- have legal authority to bind the Business Entity;
- have read and understand all of the questions contained in the questionnaire, including all definitions;
- have not altered the content of the questionnaire in any manner;
- have reviewed and/or supplied full and complete responses to each question;
- have provided true, accurate and complete responses, including all attachments, if applicable;
- understand that New York State government entities will rely on the information disclosed in the questionnaire when entering into a contract with the Business Entity; and
- are under an obligation to update the information provided herein to include any material changes to the Business Entity's responses at the time of bid/proposal submission through the contract award notification, and may be required to update the information at the request of the New York State government entities or OSC prior to the award and/or approval of a contract, or during the term of the contract.

Signature of Owner/Official _____

Printed Name of Signatory _____

Title _____

Name of Business _____

Address _____

City, State, Zip _____

Date _____

**NEW YORK STATE
VENDOR RESPONSIBILITY QUESTIONNAIRE
ATTACHMENT A – COMPLETED CONSTRUCTION CONTRACTS**

Vendor Name: _____ **NYS Vendor ID:** _____

Question 3.0: List the ten most recent construction contracts the Business Entity has completed. If less than ten, include most recent subcontracts on projects up to that number:						
1.	Agency/Owner			Award Date	Amount	Date Completed
	Contact Person	Telephone No.	Designer Architect and /or Design Engineer			
2.	Contract No.	Prime or Sub	Joint Venture (JV) Name, if applicable			EIN of JV, if applicable
	Agency/Owner			Award Date	Amount	Date Completed
3.	Contact Person	Telephone No.	Designer Architect and /or Design Engineer			
	Contract No.	Prime or Sub	Joint Venture (JV) Name, if applicable			EIN of JV, if applicable
4.	Agency/Owner			Award Date	Amount	Date Completed
	Contact Person	Telephone No.	Designer Architect and /or Design Engineer			
5.	Contract No.	Prime or Sub	Joint Venture (JV) Name, if applicable			EIN of JV, if applicable
	Agency/Owner			Award Date	Amount	Date Completed
6.	Contact Person	Telephone No.	Designer Architect and /or Design Engineer			
	Contract No.	Prime or Sub	Joint Venture (JV) Name, if applicable			EIN of JV, if applicable
7.	Agency/Owner			Award Date	Amount	Date Completed
	Contact Person	Telephone No.	Designer Architect and /or Design Engineer			
8.	Contract No.	Prime or Sub	Joint Venture (JV) Name, if applicable			EIN of JV, if applicable
	Agency/Owner			Award Date	Amount	Date Completed
9.	Contact Person	Telephone No.	Designer Architect and /or Design Engineer			
	Contract No.	Prime or Sub	Joint Venture (JV) Name, if applicable			EIN of JV, if applicable

**NEW YORK STATE
VENDOR RESPONSIBILITY QUESTIONNAIRE
ATTACHMENT A – COMPLETED CONSTRUCTION CONTRACTS**

Vendor Name: _____
NYS Vendor ID: _____

Question 3.0: List the ten most recent construction contracts the Business Entity has completed. If less than ten, include most recent subcontracts on projects up to that number:							
6.	Agency/Owner			Award Date	Amount	Date Completed	
	Contact Person	Telephone No.	Designer Architect and /or Design Engineer				
	Contract No.	Prime or Sub	Joint Venture (JV) Name, if applicable				EIN of JV, if applicable
7.	Agency/Owner			Award Date	Amount	Date Completed	
	Contact Person	Telephone No.	Designer Architect and /or Design Engineer				
	Contract No.	Prime or Sub	Joint Venture (JV) Name, if applicable				EIN of JV, if applicable
8.	Agency/Owner			Award Date	Amount	Date Completed	
	Contact Person	Telephone No.	Designer Architect and /or Design Engineer				
	Contract No.	Prime or Sub	Joint Venture (JV) Name, if applicable				EIN of JV, if applicable
9.	Agency/Owner			Award Date	Amount	Date Completed	
	Contact Person	Telephone No.	Designer Architect and /or Design Engineer				
	Contract No.	Prime or Sub	Joint Venture (JV) Name, if applicable				EIN of JV, if applicable
10.	Agency/Owner			Award Date	Amount	Date Completed	
	Contact Person	Telephone No.	Designer Architect and /or Design Engineer				
	Contract No.	Prime or Sub	Joint Venture (JV) Name, if applicable				EIN of JV, if applicable

**NEW YORK STATE
VENDOR RESPONSIBILITY QUESTIONNAIRE
ATTACHMENT B – UNCOMPLETED CONSTRUCTION CONTRACTS**

Vendor Name:

NYS Vendor ID:

Question 3.1: List all current uncompleted construction contracts:									
1.									
Agency/Owner	Telephone No.		Designer Architect and /or Design Engineer		Award Date	Completion Date			
Contact Person	Prime or Sub		Joint Venture (JV) Name, if applicable		EIN of JV, if applicable				
Contract No.	Total Contract Amount		Amount Sublet to others		Uncompleted Amount				
2.									
Agency/Owner	Telephone No.		Designer Architect and /or Design Engineer		Award Date	Completion Date			
Contact Person	Prime or Sub		Joint Venture (JV) Name, if applicable		EIN of JV, if applicable				
Contract No.	Total Contract Amount		Amount Sublet to others		Uncompleted Amount				
3.									
Agency/Owner	Telephone No.		Designer Architect and /or Design Engineer		Award Date	Completion Date			
Contact Person	Prime or Sub		Joint Venture (JV) Name, if applicable		EIN of JV, if applicable				
Contract No.	Total Contract Amount		Amount Sublet to others		Uncompleted Amount				
4.									
Agency/Owner	Telephone No.		Designer Architect and /or Design Engineer		Award Date	Completion Date			
Contact Person	Prime or Sub		Joint Venture (JV) Name, if applicable		EIN of JV, if applicable				
Contract No.	Total Contract Amount		Amount Sublet to others		Uncompleted Amount				

**NEW YORK STATE
VENDOR RESPONSIBILITY QUESTIONNAIRE
ATTACHMENT B – UNCOMPLETED CONSTRUCTION CONTRACTS**

Vendor Name:

NYS Vendor ID:

Question 3.1: List all current uncompleted construction contracts:									
5.									
Agency/Owner	Telephone No.		Designer Architect and /or Design Engineer		Award Date	Completion Date			
Contact Person	Prime or Sub		Joint Venture (JV) Name, if applicable		EIN of JV, if applicable				
Contract No.	Total Contract Amount		Amount Sublet to others		Uncompleted Amount				
6.									
Agency/Owner	Telephone No.		Designer Architect and /or Design Engineer		Award Date	Completion Date			
Contact Person	Prime or Sub		Joint Venture (JV) Name, if applicable		EIN of JV, if applicable				
Contract No.	Total Contract Amount		Amount Sublet to others		Uncompleted Amount				
7.									
Agency/Owner	Telephone No.		Designer Architect and /or Design Engineer		Award Date	Completion Date			
Contact Person	Prime or Sub		Joint Venture (JV) Name, if applicable		EIN of JV, if applicable				
Contract No.	Total Contract Amount		Amount Sublet to others		Uncompleted Amount				
8.									
Agency/Owner	Telephone No.		Designer Architect and /or Design Engineer		Award Date	Completion Date			
Contact Person	Prime or Sub		Joint Venture (JV) Name, if applicable		EIN of JV, if applicable				
Contract No.	Total Contract Amount		Amount Sublet to others		Uncompleted Amount				

**NEW YORK STATE
VENDOR RESPONSIBILITY QUESTIONNAIRE
ATTACHMENT B – UNCOMPLETED CONSTRUCTION CONTRACTS**

NYS Vendor ID:

Vendor Name:

Question 3.1: List all current uncompleted construction contracts:						
9.	Agency/Owner			Award Date	Completion Date	
	Contact Person	Telephone No.	Designer Architect and /or Design Engineer			
	Contract No.	Prime or Sub	Joint Venture (JV) Name, if applicable	EIN of JV, if applicable		
			Total Contract Amount	Amount Sublet to others	Uncompleted Amount	
10.	Agency/Owner			Award Date	Completion Date	
	Contact Person	Telephone No.	Designer Architect and /or Design Engineer			
	Contract No.	Prime or Sub	Joint Venture (JV) Name, if applicable	EIN of JV, if applicable		
			Total Contract Amount	Amount Sublet to others	Uncompleted Amount	
Grand Total All Uncompleted Contracts				\$0.00		

**NEW YORK STATE VENDOR RESPONSIBILITY QUESTIONNAIRE
ATTACHMENT C - FINANCIAL INFORMATION**

NYS Vendor ID: _____

As of Date: _____

ASSETS

Current Assets

1. Cash		\$	_____	
2. Accounts receivable - less allowance for doubtful accounts	\$	_____	-	
Retainers included in accounts receivable	\$	_____	-	
Claims included in accounts receivable not yet approved or in litigation	\$	_____	-	
Total Accounts Receivable		\$	_____	-
3. Notes receivable - due within one year		\$	_____	-
4. Inventory - materials		\$	_____	-
5. Contract costs in excess of billings on uncompleted contracts		\$	_____	-
6. Accrued income receivable				
Interest	\$	_____	-	
Other (list) _____	\$	_____	-	
_____	\$	_____	-	
Total Accrued Income Receivable		\$	_____	-
7. Deposits				
Bid and Plan _____	\$	_____	-	
Other (list) _____	\$	_____	-	
_____	\$	_____	-	
Total Deposits		\$	_____	-
8. Prepaid Expenses				
Income Taxes	\$	_____	-	
Insurance	\$	_____	-	
Other (list) _____	\$	_____	-	
_____	\$	_____	-	
Total Prepaid Expenses		\$	_____	-
9. Other Current Assets				
Other (list) _____	\$	_____	-	
_____	\$	_____	-	
Total Other Current Assets		\$	_____	-
10. Total Current Assets				\$ _____
11. Investments				
Listed securities-present market value	\$	_____	-	
Unlisted securities-present value	\$	_____	-	
Total Investments				\$ _____

**NEW YORK STATE VENDOR RESPONSIBILITY QUESTIONNAIRE
ATTACHMENT C - FINANCIAL INFORMATION**

NYS Vendor ID: _____

12. Fixed Assets

Land	\$	_____	-
Building and improvements	\$	_____	-
Leasehold improvements	\$	_____	-
Machinery and equipment	\$	_____	-
Automotive equipment	\$	_____	-
Office furniture and fixtures	\$	_____	-
Other (list) _____	\$	_____	-
	\$	_____	-
Total			\$ _____ -
Less: Accumulated depreciation			\$ _____ -
Total Fixed Assets - Net			\$ _____ -

13. Other Assets

Loans receivable			
Officers	\$	_____	-
Employees	\$	_____	-
Shareholders	\$	_____	-
Cash surrender value of officers' life insurance	\$	_____	-
Organization expense – net of amortization	\$	_____	-
Notes receivable - due after one year	\$	_____	-
Other (list) _____	\$	_____	-
	\$	_____	-
Total Other Assets			\$ _____ -

14. TOTAL ASSETS

\$ _____ -
\$ _____ -

**NEW YORK STATE VENDOR RESPONSIBILITY QUESTIONNAIRE
ATTACHMENT C - FINANCIAL INFORMATION**

NYS Vendor ID: _____

LIABILITIES

Current Liabilities

15. Accounts payable		\$	-
16 a. Loans from shareholders - due within one year		\$	-
16 b. Other Loans - due within one year		\$	-
17. Notes payable - due within one year		\$	-
18. Mortgage payable - due within one year		\$	-
19. Other payables - due within one year			
Other (list) _____	\$		-
_____	\$		-

Total Other Payables - due within one year		\$	-
20. Billings in excess of costs and estimated earnings		\$	-
21. Accrued expenses payable			
Salaries and wages	\$		-
Payroll taxes	\$		-
Employees' benefits	\$		-
Insurance	\$		-
Other	\$		-
Total Accrued Expenses Payable		\$	-
22. Dividends payable		\$	-
23. Income taxes payable			
State	\$		-
Federal	\$		-
Other	\$		-
Total Income Taxes Payable		\$	-
24. Total current liabilities		\$	-
25. Deferred income taxes payable			
State	\$		-
Federal	\$		-
Other	\$		-
Total Deferred Income Taxes		\$	-
26. Long Term Liabilities			
Loans from shareholders - due after one year	\$		-
Other Loans - due within one year			
Principle	\$		-
Interest	\$		-
Notes payable - due after one year	\$		-
Mortgage - due after one year	\$		-
Other payables - due after one year	\$		-
Other (list) _____	\$		-
_____	\$		-
Total Long Term Liabilities		\$	-

**NEW YORK STATE VENDOR RESPONSIBILITY QUESTIONNAIRE
ATTACHMENT C - FINANCIAL INFORMATION**

NYS Vendor ID: _____

27. Other Liabilities
 Other (list) _____ \$ _____
 _____ \$ _____
 Total Other Liabilities _____ \$ _____

28. TOTAL LIABILITIES _____ \$ _____

NET WORTH

29. Net Worth (if proprietorship or partnership) _____ \$ _____

30. Stockholders' Equity
 Common stock issued and outstanding _____ \$ _____
 Preferred stock issued and outstanding _____ \$ _____
 Retained earnings _____ \$ _____
 Total _____ \$ _____
 Less: Treasury stock _____ \$ _____

31. TOTAL STOCKHOLDERS' EQUITY _____ \$ _____

32. TOTAL LIABILITIES AND STOCKHOLDERS' EQUITY _____ \$ _____