

**DATE: 03/19/2025**

## NON-CONSTRUCTION CONTRACT SOLICITATION NOTICE

MTA- HQ IS NOW ADVERTISING FOR THE FOLLOWING:

**SSE #:** 0000491305

**OPENING/DUE DATE:** 05/07/2025

**TYPE OF SOLICITATION:** IFB

**DOCUMENT AVAILABILITY DATE:** 03/19/2025

**SOLICITATION TITLE:** Preventative Maintenance and Repair of HVAC Equipment for LIRR Arch St. Facility and Engineering Locations

**DESCRIPTION** The Metropolitan Transportation Authority (MTA) is now inviting bids for Preventive Maintenance and Repair of HVAC Equipment for LIRR Arch St. and Engineering Locations. Bidder is required to provide preventive maintenance, as-needed repair, replacement, and upgrade of HVAC equipment for Long Island Railroad (LIRR). The MTA reserves the right to award one contract for both Classes or separate contracts per Class shall be made by MTA in its sole discretion and based on its best interests. In addition, all qualified firms will be expected to provide services throughout the MTA System Network. MTA Reserves the right to include other MTA agencies at any time.

Funding: 100% Operating    Goals: MBE: 15%, WBE: 15% SDVOB: 6%    Est \$ Range: \$1M - \$5M    Contract Term: 3 Year Base with (2) 1-Year Options

\*PLEASE SEE ATTACHED PROJECT OVERVIEW FOR ADDITIONAL INFORMATION\*

**(x ) PRE-BID CONFERENCE**

**DATE:** 4/09/2025

**TIME:** 10:00AM

Virtual Via Microsoft Teams- Please contact the assigned procurement representative at [peter.lau@mtahq.org](mailto:peter.lau@mtahq.org) to register

**(x) SITE TOUR**

**DATE:** 04/22/2025

**TIME:** 10:00AM

**PLACE:** LIRR Arch St. Facility

**FOR MORE INFORMATION, PLEASE CONTACT:**

**PROCUREMENT REPRESENTATIVE:**

Peter Lau

**EMAIL:**

[Peter.Lau@mtahq.org](mailto:Peter.Lau@mtahq.org)

# INQUIRY

## REPLY MUST BE MADE ON THIS FORM

Date: 3/20/2025

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Metropolitan Transportation Authority (MTA), a governmental instrumentality of the State of New York, hereby solicits from you a Bid for the prices at which you offer to furnish the materials, equipment, supplies and/or services described below. The MTA Purchase Order Terms and Conditions attached to this Inquiry will be applicable to any award made on your Bid. Awards will be evidenced by the MTA's issuance of a Purchase Order accepting your Bid. MTA reserves the sole right to waive minor informalities or irregularities in or, in the alternate, to reject any or all Bids. Unless otherwise noted in the text of this Inquiry, awards will be made on a gross sum bid basis. Vendor's Bid must be signed by an authorized individual. The MTA may conduct this procurement through the secure, online My MTA Portal managed by the MTA. All Bids in the My MTA Portal must be uploaded into the Portal in accordance with the instructions and the due date provided with this Inquiry. Once opened, Bids are firm and cannot be withdrawn for 90 days. MTA is exempt from state and local sales taxes and certain federal excise taxes on its purchases.

**Inquiry #: 0000491305**

**For: Preventive Maintenance and Repair of HVAC Equipment**

**Manager (Designated "Point of Contact"): Peter Lau**

**Phone: 646-376-0836**

**Email: Peter.Lau@mtahq.org**

**Required Delivery Date: N/A**

**\*DUE DATE/TIME: 2:30PM EST, 5/7/2025**

**\*\*BID OPENING DATE/TIME: 2:30PM EST, 5/7/2025**

**\*\*If this Solicitation is subject to a public opening, such opening will take place virtually via Youtube, those who wish to attend must request the link by emailing the Point of Contact listed above. Bid results will be provided within 48 hours after the Public Bid Opening Date at <https://www.mta.info/doing-business-with-us/procurement/mta-headquarters>**

Item	Quantity	Description	Unit Price
		<p><b>*Bids will NOT be accepted after the DUE DATE/TIME indicated above</b></p> <p><b>RE: Preventive Maintenance and Repair of HVAC Equipment for LIRR Arch St. and Engineering Locations.</b></p> <p>The Metropolitan Transportation Authority (MTA) is now inviting bids for the above mentioned Inquiry. Bidder is required to provide preventive maintenance, as-needed repair, replacement, and upgrade of HVAC equipment for Long Island Rail Road (LIRR). Bidders may bid on one or both "Classes" as follows:</p> <p><b>Class A:</b> LIRR Arch Street Facility location;</p> <p><b>Class B:</b> LIRR Signal, Communications, &amp; Substations Dept. locations.</p> <p>The MTA reserves the right to award one contract for both Classes or separate contracts per Class shall be made by MTA in its sole discretion and based on its best interests. In addition, all qualified firms will be expected to provide services throughout the MTA System Network. MTA Reserves the right to include other MTA agencies at any time.</p> <p>The work under this inquiry is subject to NYS Prevailing Wage Law as administered by the New York City Comptroller. A bidder, in evaluating and determining its overall bid and, if applicable, its bids for an individual line item, shall take into account the applicable prevailing wages. The prices bid are fully loaded. All trade labor compensation and benefits are subject to the New York State prevailing wage law, New York labor Law Section 220. The rates are established by the New York City Comptroller. Certified payrolls must be provided with each Contractor invoice for the Work invoiced. The current rates are available at <a href="https://comptroller.nyc.gov/wpcontent/uploads/documents/ConstructionWorkerSchedule-2023-2024.pdf">https://comptroller.nyc.gov/wpcontent/uploads/documents/ConstructionWorkerSchedule-2023-2024.pdf</a></p> <p>The period of performance shall be three (3) Years plus two (2) one-year options to extend, option years will be issued at the discretion of the MTA and reserves the right not to issue options should it be in its interest.</p>	<p><b>PLEASE PROVIDE PRICING ON PRICE SCHEDULE(S):</b></p> <p><b>Attachment A.1A</b> (Price Schedule for Class A)</p> <p><b>Attachment A.1B</b> (Price Schedule for Class B)</p> <p><i>Above Attachments to be provided separately by the MTA in .xlsx format.</i></p>



Prospective Bidders are advised to carefully review all of the information herein prior to offering a quote. Bidder is responsible to ensure all signature(s), fill-in(s) and forms are filled out in its entirety and are provided with bid submission. failure to comply can and/or Will result in a Non-Responsive bid. Bids must be submitted on the Inquiry Form provided by the MTA.

An optional Pre-bid Conference will be held virtually via Microsoft Teams application, bidders must contact and email the *Point of Contact* at least 24-Hours prior to the scheduled date [see page 21, section 4 for schedule and instructions].

All bidders will be invited to an optional Pre-bid Site Visit at select locations associated with this contract. Bidders will have the opportunity to familiarize themselves with the equipment and conditions under which the work will be performed. The submission of a proposal shall be construed as evidence that the bidder attended the pre-bid site visit, has complete knowledge of site conditions, and accepts responsibility for all field conditions as is. Any later claim for extra payment because of difficulties encountered will not be allowed.

BY SIGNING BELOW, VENDOR CERTIFIES THAT (1) IT IS IN STRICT COMPLIANCE WITH THE TERMS AND CONDITIONS OF THE INQUIRY, (2) IT IS NOT SUBMITTING, TAKING, OR INCORPORATING ANY EXCEPTIONS, DISCLAIMERS, CONTINGENCIES, ADDITIONAL TERMS, OR OTHER MODIFICATIONS TO ANY OF THE TERMS AND CONDITIONS OF THE INQUIRY INCLUDING, BUT NOT LIMITED TO, THE TERMS AND CONDITIONS IN THE "MTA PURCHASE ORDER TERMS AND CONDITIONS", AND (3) IT AGREES TO BE BOUND BY SUCH TERMS AND CONDITIONS AND ALL CONTRACT DOCUMENTS, INCLUDING, BUT NOT LIMITED, TO THE SCOPE OF WORK AND PRICE SCHEDULE.

Discount Terms (if applicable):

Vendor Name:

Vendor's Signature:

Title:

Email address:

Federal Tax ID#:

Date:

To register on the My MTA Portal (preferred), please visit [www.MYMTA.info](http://www.MYMTA.info)

**- NO FURTHER WRITING ON THIS PAGE -  
(MTA Purchase Order Terms and Conditions to Follow)**

## MTA PURCHASE ORDER TERMS AND CONDITIONS

**1. Applicability; Definitions and Interpretations.** These terms and conditions (the "Terms and Conditions") apply to Solicitations that the Metropolitan Transportation Authority ("MTA") issues in connection with its procurement of Work. The following capitalized terms and interpretative rules have the meanings set forth below. Additional terms are defined in context.

**1.1. "Bid"** means the materials submitted by a Bidder in response to the Solicitation. The term "Proposal" and other similar terms have the same meaning as Bid.

**1.2. "Bidder"** means an individual or entity that submits a Bid in response to a Solicitation. The term "Proposer" and other similar terms have the same meaning as Bidder.

**1.3. "Contract"** means the agreement entered into between the MTA and Vendor based on the Solicitation. The Contract consists of all Contract Documents including the Solicitation, Purchase Order and the Bid.

**1.4. "Contract Documents"** means all documents that the MTA issues in connection with the Solicitation, including these Terms and Conditions.

**1.5. "Manager" (or "Contract Manager" or "Designated Point of Contact")** means the MTA representative (and her or his designees and representatives) with responsibility for overseeing the Contract. Specific Manager responsibilities are set out in the Contract.

**1.6. "Contribution"** means a suggestion, recommendation, or idea made by the MTA to Vendor relating to the Work.

**1.7. "Default Event"** means: Vendor's breach of the Contract, including where (i) performance of the Work is delayed; (ii) Vendor willfully violates any Contract obligation or has abandoned the Work; (iii) Vendor has become insolvent or has assigned the proceeds of the Contract for the benefit of creditors; (iv) Vendor has breached any representation, warranty, or covenant in the Contract; (v) Vendor has otherwise breached a Contract obligation; or (vi) a Default Event that is otherwise defined in the Contract.

**1.8. "Documentation"** means all written, printed, or electronic material that provides information, including specifications, designs, sketches, blueprints, patterns, models, manuals, handbooks, informational diagrams, system architecture, database schemas, drawings, engineering changes, and any other similar materials.

**1.9. "Effective Date"** means the date on which the MTA issues the PO, and on which Vendor promptly begins performing the Work, unless otherwise set out in the Contract.

**1.10. "Goods"** means all tangible items that Vendor is required to provide under the Contract.

**1.11. "Intellectual Property Rights"** means any rights under patent law, copyright law, trademark law, moral rights law, trade secret law, and other similar law concerning proprietary rights (whether such rights are registered or unregistered).

**1.12. Include and Including.** The words "include" and "including" and similar words used in the Contract shall mean "including, but not limited to" and shall not be interpreted to indicate a finite set, unless otherwise explicitly stated.

**1.13. "Metropolitan Transportation Authority" or "MTA"** means the Metropolitan Transportation Authority, a New York public authority and public benefit corporation established pursuant to Title 11 of Article 5 of the Public Authorities Law of the State of New York, its affiliates and subsidiaries, and the MTA's successors.

**1.14. "MTA Data"** means, collectively: (i) any information that the MTA provides to Vendor, or information belonging to the MTA to which Vendor otherwise has access to, in connection with the Contract; (ii) any information, data, reports, studies, recommendations, or other information that Vendor makes or develops in connection with, or resulting from, the Work; and (iii) derivatives of (i) and (ii) above. The term "MTA Data" expressly includes Contributions.

**1.15. "MTA Indemnitees"** means, collectively: (i) the MTA and its affiliates and subsidiaries, including Long Island Rail Road Company, Metro-North Commuter Railroad Company, Staten Island Rapid Transit Operating Authority, MTA Bus Company, MTA Construction & Development Company, First Mutual Transportation Assurance Company, and all future subsidiaries of the MTA; (ii) New York City Transit Authority and its subsidiary, Manhattan and Bronx Surface Transit Operating Authority, and all future subsidiaries of New York City Transit Authority; (iii) Triborough Bridge and Tunnel Authority; (iv) all other entities that are or may in the future be affiliates or subsidiaries of any entity identified in (i), (ii), or (iii) of this sentence, including the City of New York and State of New York; and (v) any officers, directors, employees, and agents of any entity identified in (i) – (iv) of this sentence. The term "MTA Indemnitees" also includes those additional third parties identified in an applicable MTA certificate of insurance as being covered by Vendor's indemnification obligations herein.

**1.16. "MTA Property"** means the real or tangible property of the MTA Indemnitees.

**1.17. "Personal Information"** means information that could be used to: (i) identify a unique natural person; (ii) authenticate such natural person; or (iii) commit identity theft or impersonation. By way of example, and not limitation, Personal Information includes a natural person's: (a) Social Security number; (b) passport number; (c) financial information (including cardholder data); (d) driver's license or state-issued identification card number; and (e) other identifying or identifiable information as defined by law, such as a user name and password.

**1.18. "Price Schedule"** means those forms included in the Contract Documents to be completed and submitted by Vendor with its Bid, and that sets out Vendor's proposed compensation for the Work.

**1.19. "Project Manager" or "PM"** means the MTA representative (and her or his designees and representatives) responsible for managing the Contract.

**1.20. "Purchase Order" or "PO"** means an MTA-issued document (i) notifying Vendor that it has been awarded the Contract, or (ii) constituting the MTA's order of Work and that includes the Delivery Requirements as further set out in Section 3.4.1 (Delivery Requirements; Delivery Remedies). An MTA-issued notice of award letter or blanket order release form may be used

in lieu of a PO notifying Vendor that it has been awarded the Contract.

**1.21. Or.** The term "or" when used in the Contract means "and/or".

**1.22. "Security-Sensitive Information"** means Confidential Information that the MTA designates as security sensitive either orally or by marking the Confidential Information as "security-sensitive information" or with a similar legend denoting its status.

**1.23. "Services"** means all labor and services that Vendor is required to perform pursuant to the Contract.

**1.24. "Solicitation"** means those MTA-issued documents and other MTA activities relating to the MTA's procurement of Work prior to the Effective Date. The term "Solicitation" includes requests for proposals, invitation for bids, inquiries and other similar documents that the MTA issues in connection with its procurement of Work.

**1.25. "Term"** means the period of time identified in the Contract for the performance of the Work, starting on the Effective Date through the end date, and as such period may be extended pursuant to the terms therein.

**1.26. "Vendor"** means the Bidder to which the Contract was awarded. The terms "Contractor", "Seller", "Offeror" and other similar terms have the same meaning as Vendor.

**1.27. "Work"** means, collectively: (i) the furnishing of all services, labor, goods, materials, equipment, Documentation, and deliverables themselves; and (ii) all other incidentals including any other required construction, furnishing, installation, and performance required by the Contract. The term "Work" expressly includes all Goods and Services.

**2. Scope of Work.** Vendor shall complete all Work in accordance with the Contract, including Vendor's provision, as applicable, of all Goods, Services, material, labor, plants, tools, transportation, and all other means and items necessary to complete the Work. The Contract indicates the amount of Work, its nature, and the method of its performance. If specific requirements are not provided, then the Work shall conform to industry best practices and the latest applicable standards of nationally recognized associations, and otherwise consist of best class materials. Vendor shall perform the Work with the highest regard to the safety of life and property, in accordance with the Project Manager's directions, and to the MTA's reasonable satisfaction. Vendor shall not modify the Work unless such modification is memorialized in a Change Order signed by both parties. Vendor shall perform the Work continuously and diligently.

**3. Ordering and Delivery of Goods.** The following provisions apply to the extent that the Work involves Vendor's provision of Goods.

**3.1. Placing Orders.** The MTA shall place orders for Goods purchased pursuant to the Contract using MTA-established ordering procedures, including the MTA's issuance of a PO.

**3.2. Shipment Consolidation; Over Shipment.** Unless otherwise specified in the Contract or a PO, Goods ordered shall be consolidated into a single shipment to the MTA that is plainly marked with the PO number. If Vendor delivers to the MTA a quantity of Goods that exceeds the quantity ordered (each, an "Over Shipment"), then the MTA shall have the right to accept or reject the Over Shipment, either in part or in whole. If the MTA rejects any portion of the Over Shipment, then such rejected portion shall be treated as if the Goods were delivered in advance of the Delivery Requirements as set out in Section 3.4.1 (Delivery Requirements; Delivery Remedies).

**3.3. Shipment Notice.** Vendor shall notify the Project Manager of each shipment of Goods made pursuant to the Contract. Such notice must: (i) specify the PO number, and the kind and quantity of Goods being shipped; (ii) include Vendor's acknowledgment of its compliance with Section 7.9 (Most Favored Customer); (iii) be clearly marked "Shipment Notice"; and (iv) be sent via email on the shipping date.

**3.4. Delivery.**

**3.4.1. Delivery Requirements; Delivery Remedies.** The MTA shall include in each order for Goods: (a) the quantity of Goods to be provided, and (b) the time and location that such Goods are to be delivered (collectively, the "Delivery Requirements"). Vendor acknowledges that time is of the essence and shall fully comply with the Delivery Requirements. If Vendor violates the Delivery Requirements, then the MTA shall have the right to: (i) inspect and accept or reject such Goods pursuant to Section 5 (Review of Work; Acceptance and Rejection); (ii) return such Goods to Vendor for delivery in compliance with the Delivery Requirements or deliver the Goods to the designated location, all at Vendor's sole cost and expense; (iii) retain the Goods, and withhold payment for such Goods until the delivery date included in the Delivery Requirements; (iv) place the Goods in storage, at Vendor's sole cost and expense, until the delivery date included in the Delivery Requirements; or (v) require Vendor to remove such Goods within five (5) days of the MTA's request and, if Vendor fails to do so, then such Goods shall be deemed abandoned and the MTA shall have the right to dispose of such Goods and to apply any proceeds of such disposal to Vendor's account, after deducting expenses for such disposal, and all without further liability or responsibility of the MTA. Notwithstanding anything to the contrary, Vendor shall be solely responsible for all: (a) risk of loss of the Goods until such risk of loss transfers to the MTA pursuant to Section 16 (Risk of Loss); and (b) insurance charges relating to the Goods until the risk of loss transfers to the MTA pursuant to Section 16 (Risk of Loss).

**3.4.2. Delivery Delays.** If Vendor is unable to meet the Delivery Requirements for any reason, then it shall immediately notify the MTA of the delay via telephone and in writing. Such notice shall include: (i) the specific Goods delayed; (ii) the reason for the delay; and (iii) the proposed schedule to correct the delay. Subject to Section 29.16 (Force Majeure), the MTA shall have the right to (a) accept or reject the delayed performance, and (b) direct Vendor to provide expedited shipping, and Vendor shall be solely responsible for any excess costs incurred for such expedited shipping. Vendor's failure to notify the MTA of its inability to meet the Delivery Requirements or Vendor's failure to comply with the Delivery Requirements for more than thirty



(30) days following an MTA-approved delay shall each constitute a Default Event. The MTA shall not be liable for Vendor's commitments or production arrangements necessary to meet the Delivery Requirements.

#### 4. Performance of Services.

**4.1. Time of Performance; Delays.** Vendor acknowledges that time is of the essence and agrees to meet all scheduled dates established in the Contract with respect to its performance of Services. The MTA has the sole discretion to grant extensions of time to perform Services if Vendor has been delayed in its performance to the extent that: (i) the delay is beyond Vendor's reasonable control; (ii) the delay is due to a cause arising after the Effective Date, and neither was, nor could have been, reasonably anticipated before the Effective Date; (iii) performance is actually delayed; and (iv) the delay could not have been anticipated, avoided, and mitigated by the exercise of all reasonable precautions, efforts, and measures, including planning, scheduling, and rescheduling, whether before or after the delay occurred. If the delay is attributable to the MTA, then Vendor's sole and exclusive remedy shall be to receive an equitable extension of the time to perform the Services. The MTA reserves the right to rescind any extension of time due to delay if the MTA later determines that the delay could have been mitigated by Vendor's reasonable exercise of precautions, efforts, or measures.

**4.2. Holiday Hour Limitations. "Holiday Hours"** means 1:00 PM (ET) on the day preceding an MTA-observed holiday through 11:59 PM (ET) on the day of an MTA-observed holiday. Unless otherwise set out in the Contract or the Project Manager agrees in writing, Vendor shall not schedule or perform any Services during Holiday Hours that require MTA oversight, inspection, support, or that otherwise interferes with MTA operations or impacts passengers.

#### 5. Review of Work; Acceptance and Rejection.

**5.1. MTA Review of Work.** All Work is subject to the MTA's inspection and acceptance. Unless otherwise set out in the Contract, and in addition to any inspection performed pursuant to Section 6 (Inspection), the following process applies to the MTA's inspection of Work:

**5.1.1. Inspection and Acceptance Testing; Acceptance and Rejection.** Vendor shall notify the MTA in writing when an applicable portion of the Work has been provided to the MTA in compliance with the Contract and is otherwise in a form ready for inspection and acceptance testing. Upon the MTA's receipt of such notice, or the MTA's determination that such Work is ready for inspection and acceptance testing, the MTA shall use good faith efforts to inspect such Work within thirty (30) calendar days (the "**Inspection Period**") to determine whether the Work: (i) complies with the Contract requirements; (ii) is free of defects in material or workmanship; and (iii) otherwise meets the MTA's reasonable expectations (collectively, the "**Acceptance Criteria**"). If the MTA determines that the Work meets the Acceptance Criteria, then the MTA shall pay for such Work in accordance with the Contract, and such Work shall be deemed inspected and accepted by the MTA upon its issuance of payment for such Work. Vendor agrees that no other MTA action shall constitute the MTA's acceptance of Work. If the MTA determines that the Work fails to meet the Acceptance Criteria, then it will reject the Work and notify Vendor of the same in writing (each, a "**Deficiency Notice**"). Each Deficiency Notice shall describe (a) the deficiencies preventing acceptance, and (b) MTA-required corrective actions. Vendor acknowledges that: (1) the MTA's execution of a bill of lading shall not constitute its acceptance of Work, and (2) the MTA's failure to reject Work shall not be deemed to be, or otherwise imply, its acceptance of such Work for any purpose.

**5.1.2. Vendor Deficiency Notice Obligations.** Vendor shall have ten (10) business days from its receipt of a Deficiency Notice, or such other period of time mutually agreed upon by the MTA and Vendor, to fully correct, re-perform, or replace the rejected Work. Upon completion of such corrective actions, Vendor shall resubmit the Work for further inspection pursuant to this Section 5 (Review of Work; Acceptance and Rejection), and the Inspection Period shall be deemed to have commenced upon such resubmission. Work that has been rejected shall be removed or, if the MTA permits, corrected in its current location, both at Vendor's sole cost and expense. If Vendor fails to promptly remove the Work or otherwise correct the same as required, then the MTA shall have the right to: (i) correct the Work itself or engage a third party to do so, all at Vendor's sole cost and expense; (ii) accept the Work, and pay Vendor a reduced amount for the Work, with the MTA determining an equitable reduction in price based on the Work defects; (iii) return rejected portions of the Work to Vendor at Vendor's sole cost and expense, in which case the MTA shall have no further obligation with respect to such Work; or (iv) treat such failure as a Default Event. Notwithstanding anything to the contrary, if Vendor fails to remove rejected Work in compliance with the MTA's direction within fifteen (15) days of such notice, then such Work shall be deemed abandoned and the MTA shall have the right to dispose of such Work and to apply any proceeds of such disposal to Vendor's account, after deducting expenses for such disposal, and all without further liability or responsibility of the MTA with respect to the Work. In no event shall the MTA have any liability for rejected Work.

**5.1.3. Effects of Acceptance.** Vendor agrees that the sole effects of the MTA's acceptance of Work are (i) to transfer the risk of loss and title for the applicable portion of the Work from Vendor to the MTA pursuant to Section 16 (Risk of Loss), and (ii) to determine the conclusion of the Inspection Period when calculating the timing of the MTA's payment obligation pursuant to Section 7.6 (Prompt Payment; Tolling). The MTA's acceptance of Work, granting an extension of time, taking possession of Work, or other similar actions, shall not operate as a waiver of any Contract obligation or the MTA's right to damages. By way of clarification, and not limitation, the MTA's inspection and acceptance of Work shall not prohibit the MTA from subsequently rejecting the Work, revoking such acceptance, or recovering damages for Work that is not free from patent or latent defects.

**6. Inspection.** In addition to the MTA's rights set out in Section 5 (Review of Work; Acceptance and Rejection), all Work is subject to the MTA's inspection and testing, to the extent practicable, at all time and places, including the time and place of manufacture (the "**Inspection**

**Right**"). The Inspection Right includes the right (i) to make the most thorough and detailed inspection of the Work, including materials and their manufacture or preparation, and (ii) to draw Vendor's attention to deficiencies in the Work or other variations from the Contract requirements. The Inspection Right is intended solely for the MTA's benefit. The Inspection Right does not, and the MTA's failure to draw Vendor's attention to a defect does not, give Vendor any right or claim against the MTA, and does not relieve Vendor from its obligations under the Contract. Vendor shall at all times provide the Project Manager access to all facilities necessary, convenient, or desirable for inspecting the Work. The Project Manager shall be admitted at any time without delay to where the Work is being performed and shall be permitted to inspect materials at any place or stage of their manufacture, preparation, shipment, or delivery. If the Work or any part thereof is found defective, Vendor shall, without cost to the MTA, promptly remedy such defect in order to achieve compliance with the Contract requirements. Any inspection hereunder shall not unreasonably disrupt Vendor's performance of the Work.

#### 7. Consideration; Invoices and Payment.

**7.1. Consideration.** The MTA shall pay the amount set out in the Price Schedule for all Work and all costs and expenses that Vendor incurs in connection with the Contract (the "**Total Contract Price**"). The Total Contract Price does not represent the MTA's commitment or guarantee to pay the Total Contract Price unless the MTA determines that Vendor has fully met the Contract requirements for receiving such payment. The Total Contract Price shall also be adjusted to reflect those amounts established in a Change Order or other Contract amendment. Under no circumstances shall the MTA pay for Goods or Services that are not set out in the Contract, a Change Order, or other Contract amendment and, as a result, are not included in the Total Contract Price.

**7.2. Prices to Include.** The MTA shall pay, and Vendor shall accept as full payment, the Total Contract Price as full compensation for all costs and expenses for completing all Work in accordance with the Contract, including: (i) all labor, services, hardware, equipment, and material required to be provided under the Contract; (ii) all overhead, expenses, fees, and profits; (iii) all risks and obligations set forth in the Contract; (iv) all applicable fees and taxes; and (v) all expenses attributable to any unforeseen difficulty encountered in the provision of the Work. The MTA shall not be responsible for Vendor costs attributable to: (a) Vendor or subcontractor mistakes, inefficiencies, or deliveries of defective or non-conforming Work; (b) Vendor or subcontractor failures to timely identify and resolve problems; or (c) training or other time required to bring a replacement person up to the level of proficiency and knowledge of a person being replaced.

**7.3. Travel Expenses.** If performance of Work requires travel (including meals and lodging), then such travel shall be done in accordance with the MTA's Travel and Business Expense Policy, Prepaid Meal Deduction Table, and Per Diem Table (or the New York Office of the State Comptroller's Travel Manual if said Manual is identified in the Contract as controlling), as the MTA may update the same from time-to-time, and which are available to Vendor upon request. In no event shall Vendor's travel expenses exceed the amount set out in its Bid, absent the express written consent of the MTA prior to incurring such expenses.

**7.4. ACH Payment.** The MTA Business Service Center ("**MTA BSC**") shall make authorized payments to Vendor. All MTA BSC payments shall be made via Automated Clearing House ("**ACH**"). Vendor hereby authorizes MTA BSC to make payments to Vendor using an MTA BSC-designated ACH. If Vendor has not previously provided MTA BSC with ACH instructions, or if such instructions have changed since they were last provided, then Vendor shall submit current ACH instructions to MTA BSC via the Vendor Master Setup Maintenance form (available at: <https://new.mta.info/doing-business-with-us/business-service-center/invoice-processing>) immediately upon the Effective Date. Vendor acknowledges that providing such ACH instructions is necessary before MTA BSC issues any payment pursuant to the Contract.

#### 7.5. Invoices.

**7.5.1. Invoice Content.** In addition to any other Contract requirements, Vendor invoices shall include: (i) a PO number; (ii) a detailed description of the Goods (including quantity) delivered, Services performed, or other events triggering Vendor's entitlement to payment, as applicable; (iii) the amount to which Vendor believes that it is entitled, less any deductions to which the MTA BSC is entitled or is required by the Contract, such as retainage, if any; (iv) copies of any required acceptance certificates (if applicable); and (v) any other information that the MTA BSC reasonably requests. The MTA BSC reserves the right to reject any incomplete or inaccurate invoice. If an invoice is not calculated correctly, then the MTA BSC may reject it in whole, or only accept that portion of the invoice that has been calculated correctly.

**7.5.2. Invoice Submission; Acceptance.** Vendor shall submit an invoice for the applicable Work upon Vendor's provision of Work to the MTA in compliance with the Contract. In no event shall Vendor submit invoices more than once per month. Vendor shall submit all invoices by regular United States Postal Service (USPS) mail or email as follows:

Email: [invoice@mtabsc.org](mailto:invoice@mtabsc.org)  
Address: MTA Business Service Center  
Accounts Payable  
333 W. 34<sup>th</sup> Street, 9<sup>th</sup> Floor  
New York, NY 10001-2402

Email submission is preferred, as your invoice will be processed more quickly.

**7.6. Prompt Payment; Tolling.** The MTA shall make payments to Vendor in compliance with Public Authorities Law Section 2880, and the MTA's implementing rules, called the Statement of Rules and Regulations With Respect To Prompt Payment (the "**Prompt Payment Statement**"), which is codified in 21 NYCRR Part 1002. Payments, including progress payments and those for substantial completion, if applicable, are generally made within the "**Payment Period**", which is defined herein as thirty (30) calendar days (excluding legal

holidays) of the later of (i) MTA's receipt of Vendor's proper invoice, and (ii) the conclusion of the Inspection Period. The MTA reserves the right to audit an invoice to verify that the amount to be paid is in accordance with the Contract (each, an **"Invoice Audit"**). The MTA shall use good faith efforts to complete any Invoice Audit within ten (10) business days. The Payment Period shall be tolled pursuant to the Prompt Payment Statement if an Invoice Audit or an MTA inspection reveals a defect in Work or suspected improprieties of any kind (including Vendor Contract breaches), or the MTA otherwise rejects the Work pursuant to Section 5 (Review of Work; Acceptance and Rejection). Interest for late payments shall be paid in accordance with the Prompt Payment Statement.

**7.7. Final Payment; Release.** Upon the MTA's determination that all Work required under the Contract has been inspected and accepted, the MTA shall notify Vendor of the same and Vendor shall immediately submit to the MTA an invoice for final payment of any amount that Vendor believes to be due and owing (the **"Proposed Final Payment"**). The MTA shall then issue the amount it believes to be due and owing as final payment (the **"Final Payment"**). The Proposed Final Payment shall otherwise be processed in accordance with this Section 7 (Consideration; Invoices and Payment). Vendor's acceptance of the Final Payment shall constitute Vendor's release of the MTA from any claim, liability, or obligation arising out of or relating to the Contract and for any prior act, neglect, fault, or default of the MTA, its officers, agents, or employees. No MTA payment, Final Payment or otherwise, shall constitute the MTA's release of Vendor or its sureties from any claim, liability, or obligation arising out of or relating to the Contract. Notwithstanding anything to the contrary, Vendor shall not be barred from commencing an action for breach of Contract if a detailed and verified statement of the claim is delivered to the MTA no later than forty (40) days after the MTA's issuance of the Final Payment; provided, however, that such statement specifies the items upon which the action will be based and any such action shall be limited to such items and addressed in accordance with Section 24 (Disputes). In the event the MTA retains five (5) percent of the Total Contract Amount, upon satisfactory completion of the Work and, if the MTA so elects, the completion by the MTA of its audit of the Vendor's records and accounts as provided in Article 15 (Recordkeeping; Audit), which audit shall be completed as expeditiously as possible, any amounts so retained by the MTA, less any amounts found due the MTA as a result of such audit, shall be paid the Vendor.

**7.8. Early Payment Program or "EPP".** When applicable, the MTA offers EPP, or the opportunity to receive early payment(s) on approved invoices in exchange for a discount. There is no cost or obligation on Vendor to join the EPP. Vendor must utilize ACH payments in order to enroll in EPP. Additional information on EPP may be found at: [www.c2fo.com/MTA](http://www.c2fo.com/MTA). Rates of discount are set at the MTA's sole and absolute discretion.

**7.9. Most Favored Customer.** If, during the Term, both (i) Vendor sells or offers for sale goods to a third party at a lower price than the price that the MTA is paying for the same or similar Goods, and (ii) the quantity of goods sold or offered for sale to such third party is the same or less than the quantity of Goods that the MTA has or may purchase pursuant to the Contract, then the MTA's purchase price shall be reduced to such lower price for all unshipped orders of Goods and all subsequent orders of Goods made pursuant to the Contract.

## **8. Intellectual Property.**

**8.1. Grant of Rights to MTA in Work.** Vendor hereby grants to the MTA a worldwide, non-exclusive, sublicensable, fully paid-up, royalty-free license in and to those Intellectual Property Rights necessary to permit the MTA: (i) to copy, distribute, modify, and otherwise use and exploit the Work, and (ii) to make, use, and transfer items that embody the Work; provided, however, that the MTA shall exercise such rights solely for the purposes specified in or contemplated by the Contract and the MTA's operations. The MTA shall retain such rights for the useful life of the Work, as determined by the MTA.

**8.2. Grant of Rights to Vendor in MTA Data.** Subject to the terms and conditions of the Contract, including those set out in Section 23 (Confidentiality and Privacy), the MTA, under its Intellectual Property Rights, hereby grants to Vendor during the Term, a limited, non-exclusive, non-transferrable, non-sublicensable license to copy and modify MTA Data, but solely for the purpose of Vendor fulfilling its obligations to the MTA under the Contract, and for no other purpose. Vendor acknowledges that the rights granted to it pursuant to this Section 8.2 (Grant of Rights to Vendor in MTA Data) shall immediately terminate upon any Contract termination or expiration.

**8.3. Ownership of MTA Data.** Vendor acknowledges that (i) MTA Data is licensed, not sold, to Vendor, and (ii) as between Vendor and the MTA, and subject to Section 8.2 (Grant of Rights to Vendor in MTA Data), the MTA is the sole and exclusive owner of all of the right, title, and interest in and to MTA Data, and in and to all associated Intellectual Property Rights.

**8.4. Ownership of Custom Work; Assignment.** The term **"Custom Work"** means Work that Vendor specifically develops or designs, or causes to be developed or designed, for the MTA pursuant to the Contract. Custom Work includes, but is not limited to, designs, sketches, drawings, blueprints, patterns, dies, molds, masks, software, models, tools, gauges, equipment, Custom Training Materials, and special appliances. Vendor hereby assigns and transfers to the MTA all right, title, and interest in and to all Intellectual Property Rights associated with the Custom Work, and Vendor shall provide all requested supporting documentation to the MTA to perfect such assignment.

**8.5. No Implied Rights.** Nothing in the Contract shall be construed to grant Vendor any rights other than those expressly provided herein. Any rights granted to Vendor under the Contract must be expressly provided herein, and there shall be no implied rights pursuant to the Contract, based on any course of conduct or other construction or interpretation thereof. All rights and licenses not expressly granted herein by the MTA are reserved.

**8.6. Bankruptcy Code Section 365(n).** The licenses granted to the MTA in the Contract are rights to "intellectual property" for purposes of Section 365(n) of the U.S. Bankruptcy Code, and

the MTA shall be entitled to exercise all rights provided by Section 365(n). Vendor agrees that it shall not interfere with the MTA's exercise of such rights, and further agrees that the MTA shall maintain the licenses under the terms of Contract, even if Vendor ceases operations or is purchased or merges into another entity.

## **9. UCC; Modifications.**

**9.1. Vendor Warranty Obligations.** In addition to any other representations, warranties, and requirements set out in the Contract, the warranties, express or implied, created or recognized by the Uniform Commercial Code of the State of New York (the **"UCC"**) shall apply to all Work, and may not be excluded or modified. The warranties set out in the preceding sentence include Work that does not otherwise constitute "goods" within the meaning of the UCC. Vendor agrees to take back, replace, and otherwise correct to the MTA's satisfaction, all Work violating such warranties and to assume all risk and costs associated with such remedy. Any Work held by the MTA pending Vendor's remedy, shall be so held at Vendor's sole risk and expense. In addition, Work, as delivered, shall include and be covered by all applicable warranties of the manufacturer and any other intermediary, and Vendor shall be responsible for enforcing such warranties on the MTA's behalf. The delivery and existence of any such manufacturers' warranties shall not relieve Vendor of any of its obligations under the Contract. Except as otherwise provided in the Contract, Vendor warrants its workmanship for a period of one (1) year from completion of the Work.

**9.2. Modification to Work.** The MTA shall have the right to modify any portion of the Work (each, an **"MTA Work Modification"**). Vendor agrees that MTA Work Modifications are the MTA's property, and shall not relieve Vendor of any of its Contract warranty obligations in the Contract, unless the MTA Work Modification is the sole cause of the Work's nonconformance with the warranty.

## **10. Vendor Compliance.**

**10.1. Compliance with Laws and Regulations; Permits and Licenses.** A non-exhaustive list of applicable laws, regulations, and requirements is incorporated into, and attached to, these Terms and Conditions as Schedule 1 (Applicable Laws and Regulations). Vendor shall, and ensure that any subcontractors shall, at their sole cost and expense, comply with all applicable federal, state, and local laws, rules, and regulations, whether or not referenced in the Contract or otherwise included in Schedule 1 (Applicable Laws and Regulations). Vendor shall be solely responsible for obtaining and paying all charges, permits, and licenses required for the performance of the Work. If a permit or license is not required due to the MTA's statutory exemption, then Vendor shall nevertheless secure such permit or license except to the extent that the MTA waives such obligation in writing.

**10.2. All Legal Provisions Included.** As a public entity, the MTA is required by law, rule, or regulation to include certain provisions in agreements that it enters into with third parties (collectively, the **"Required Legal Provisions"**). Notwithstanding anything to the contrary, if any Required Legal Provision is not included in the Contract, or included incorrectly, then the Contract shall be deemed amended so as to include the Required Legal Provision in the required form, and such Required Legal Provision shall be binding on the MTA and Vendor.

**10.3. Compliance with MTA Policies and Procedures.** Vendor shall comply with all MTA policies, procedures, and standards (and MTA updates to the same) relating to Vendor's performance of the Work. Vendor shall also comply with the Guidelines for Contractors, a copy of which was either included with the Contract Documents or available upon request.

## **11. Indemnification.**

**11.1. Vendor Indemnification.** Vendor shall defend, indemnify, and hold the MTA and the MTA Indemnitees, harmless from and against any third party claim, action, suit, or proceeding resulting from: (i) Vendor's breach of the Contract; (ii) any effluent or other hazardous waste, residue, contaminated soil, or other similar material discharged from, removed from, or introduced on, about or under MTA Property; (iii) Vendor's failure to comply with law; (iv) any Work's actual or alleged infringement of a third party's Intellectual Property Rights; (v) injury to persons, deaths, or property damage caused by Vendor; and (vi) any acts or omissions of Vendor or its agents, subcontractors, or employees. Subject to Section 11.2 (Procedure for Indemnification), Vendor shall indemnify the MTA Indemnitees for all losses, damages, liabilities, fines, penalties, assessments, and all reasonable costs and expenses (including attorneys' fees) incurred by the MTA Indemnitees in any such claim, action, suit, or proceeding. Vendor acknowledges that its indemnification obligations are absolute and not dependent upon any question of negligence on Vendor's or the MTA Indemnitees' part, or on the part of any of their agents, officers, employees, or subcontractors.

**11.2. Procedure for Indemnification.** The MTA shall use its good faith efforts to notify Vendor within a reasonable time of the assertion of any claim for which the MTA is seeking indemnification (each, an **"Indemnified Claim"**). If the MTA decides to conduct the defense of an Indemnified Claim, then Vendor shall reimburse the MTA for all reasonable costs and expenses (including attorneys' fees) that the MTA Indemnitees incur in connection with their defense of the Indemnified Claim, and Vendor shall cooperate fully with the MTA in such defense, at Vendor's sole cost and expense. If the MTA decides to have Vendor defend the Indemnified Claim, then the MTA shall notify Vendor of such in writing and: (i) Vendor shall hire MTA-approved counsel; (ii) Vendor shall bear all costs and expenses associated with the Indemnified Claim; (iii) Vendor shall have sole control of the defense and settlement of the Indemnified Claim, provided that the MTA Indemnitees are fully indemnified and that any settlement does not include the admission of guilt, wrongdoing, negligence, or comparable plea, the imposition of civil or criminal penalties or indictments, or the entering of consent decrees or orders of any kind, by the MTA Indemnitees or Vendor on behalf of the MTA Indemnitees without the MTA's express written consent; (iv) the MTA shall cooperate fully with Vendor in the defense of the Indemnified Claim, at Vendor's sole cost and expense; and (v) the

MTA shall be entitled, but not obligated to participate in any defense at its own expense and with counsel of its own choosing.

## 12. Limit of Liability.

**12.1. Excluded Categories.** The term "Excluded Categories" means any of the following: (i) Vendor's obligations set out in Section 11 (Indemnification) and Section 17 (Safety); (ii) a breach of Section 23 (Confidentiality and Privacy); (iii) Vendor's bad faith refusal to perform the Work or any other obligation under the Contract; (iv) bodily injury or death; (v) property damage; (vi) violations of applicable law; (vii) gross negligence or reckless misconduct. Vendor and the MTA acknowledge that no limits of liability apply to the Excluded Categories.

**12.2. Limit of Liability; Small Threshold.** EXCEPT WITH RESPECT TO THE EXCLUDED CATEGORIES, IF THE TOTAL CONTRACT PRICE IS EQUAL TO OR LESS THAN FIFTY THOUSAND DOLLARS (\$50,000), IN NO EVENT SHALL THE LIABILITY OF EITHER PARTY TO THE OTHER PARTY, IN THE AGGREGATE, IN LAW OR IN EQUITY, EXCEED THE GREATER OF (I) THREE TIMES THE TOTAL CONTRACT PRICE AND (II) ONE HUNDRED AND FIFTY THOUSAND DOLLARS (\$150,000).

**12.3. Limit of Liability; Medium Threshold.** EXCEPT WITH RESPECT TO THE EXCLUDED CATEGORIES, IF THE TOTAL CONTRACT PRICE IS MORE THAN FIFTY THOUSAND DOLLARS (\$50,000) AND LESS THAN OR EQUAL TO TWO HUNDRED THOUSAND DOLLARS (\$200,000), IN NO EVENT SHALL THE LIABILITY OF EITHER PARTY TO THE OTHER PARTY, IN THE AGGREGATE, IN LAW OR IN EQUITY, EXCEED THE GREATER OF (I) THREE TIMES THE TOTAL CONTRACT PRICE OR (II) THREE HUNDRED THOUSAND DOLLARS (\$300,000).

**12.4. Limit of Liability; Large Threshold.** EXCEPT WITH RESPECT TO THE EXCLUDED CATEGORIES, IF THE TOTAL CONTRACT PRICE IS GREATER THAN TWO HUNDRED THOUSAND DOLLARS (\$200,000), IN NO EVENT SHALL THE LIABILITY OF EITHER PARTY TO THE OTHER PARTY, IN THE AGGREGATE, IN LAW OR IN EQUITY, EXCEED THE GREATER OF (I) THREE TIMES THE TOTAL CONTRACT PRICE OR (II) ONE MILLION DOLLARS (\$1,000,000).

**12.5.** THE LIMITS OF LIABILITY IN SECTIONS 12.2, 12.3, AND 12.4 ABOVE ARE INDEPENDENT OF EACH OTHER AND ANY OTHER LIMIT OF LIABILITY SET FORTH IN THE CONTRACT DOCUMENTS AND REFLECTS A SEPARATE ALLOCATION OF RISK FROM PROVISIONS SPECIFYING OR LIMITING A PARTY'S REMEDIES.

**13. Vendor Representations and Warranties.** In addition to any other representations, warranties, and covenants set out in the Contract, Vendor represents, warrants, and covenants (as applicable) to the MTA, as of the Effective Date and throughout the Term, as follows:

**13.1. Existence.** Vendor: (i) is duly incorporated, organized, validly existing, and in good standing as a corporation under the laws of the jurisdiction of its incorporation; (ii) is duly qualified and in good standing under the laws of each jurisdiction where its ownership, lease, or operation of property or conduct of business requires; and (iii) has the power, authority, and legal right to conduct the business in which it is currently engaged.

**13.2. Authority.** Vendor has all necessary power, authority, and legal right to execute, deliver, and perform the Contract. Vendor has taken all necessary action to authorize the execution, delivery, and performance of the Contract.

**13.3. No Legal Bar.** Vendor's execution, delivery, and performance of the Contract does not and shall not violate any provision of any existing law, regulation, any court or government order, judgment, award, or decree, the charter or by-laws of Vendor, any mortgage, indenture, lease, contract, or other agreement or undertaking to which Vendor is a party or by which Vendor or any of its properties or assets may be bound, and will not result in the creation or imposition of any lien on any of its respective properties or assets pursuant to the provisions of any such mortgage, indenture, lease, contract, or other agreement or undertaking.

**13.4. No Commission.** No person has been employed or retained to solicit or secure the Contract for a commission, percentage, brokerage, contingent fee, or other consideration, except for bona fide employees or bona fide established commercial or selling agencies that Vendor maintains for the purpose of securing business.

**13.5. No Litigation.** Except as specifically disclosed to the MTA in writing prior to the Effective Date, Vendor is neither involved in any claim, litigation, investigation, or proceeding of, or before, any court, arbitrator, or governmental authority, nor is there currently pending or, to Vendor's knowledge, any claim, litigation, or proceeding threatened against Vendor or its properties or revenues (i) that involves a claim of defective design or workmanship in connection with any contract entered into by Vendor, or (ii) that, if adversely determined, would have an adverse effect on Vendor's business, operations, property, or financial condition. For purposes of this Section 13.5 (No Litigation), a claim, litigation, investigation, or proceeding may be deemed disclosed to the MTA if the MTA has received, prior to the Effective Date, detailed information concerning the nature of the matter involved, the relief requested, and a description of Vendor's intended response to such matter.

**13.6. No Default.** Vendor is not in default in the payment or performance of any obligations under any mortgage, indenture, lease, contract, or other agreement or undertaking to which it is a party or by which it or any of its properties or assets may be bound, and no such default or other default event (as defined in any such mortgage, indenture, lease, contract, or other agreement or undertaking) has occurred, is occurring, or would occur as a result of the execution and performance of the Contract. Vendor is not in default under any order, award, or decree of any court, arbitrator, or government binding upon or affecting it or by which any of its properties or assets may be bound or affected, and no such order, award, or decree would affect Vendor's ability to (i) carry on its business as presently conducted, or (ii) perform its obligations under the Contract or any of the other financing to which it is a party.

**13.7. No Conviction or Indictment.** Neither Vendor, nor any of its personnel or shareholders,

have been (i) the subject of any investigation or (ii) convicted or indicted for the commission of any crime involving misconduct, corruption, bribery, or fraud in connection with any public contract in the State of New York or any other jurisdiction, except as has been specifically disclosed in writing to the MTA. If Vendor becomes aware of, or any such conviction or indictment is obtained or any such investigation commences during the Term, regardless of the date of the occurrence giving rise to the subject matter of such conviction, indictment or investigation, then Vendor shall immediately disclose the same in writing to the Manager.

**13.8. Compliance with Terms and Conditions and Applicable Law.** Vendor shall comply with all (i) terms and conditions of the Contract, and (ii) applicable law, including those identified in Schedule 1 (Applicable Laws and Regulations).

**13.9. Quality of Work; Performance Standard.** Vendor shall (i) perform and provide all Work in the best and most professional and workmanlike manner, by qualified individuals of appropriate skill, training, and experience, employing requisite resources and materials, and (ii) comply with all MTA policies, procedures, and rules. The Work shall be fit and suitable for its particular purpose(s) and its use as contemplated under the Contract, and shall perform to the MTA's reasonable satisfaction, and otherwise be in compliance with best industry practices and professional standards. Vendor shall, throughout the Term, employ, maintain, and assign a sufficient number of competent and qualified professionals and other personnel to meet the schedule in the Contract.

**13.10. Noninfringement.** Vendor shall not, nor shall the Work, violate any Intellectual Property Rights of any third party.

**14. Remedies for Breach of Representations and Warranties.** In addition to any other rights and remedies available to the MTA, for any breach of Vendor's representations, warranties, and covenants set out in the Contract, the MTA shall have the right to terminate the Contract due to a Default Event or, at its discretion, deduct from the Total Contract Price or otherwise recover the full amount of any harm or other damages that the MTA sustains as a result of Vendor's breach, and to include the occurrence of such a breach in assessments of Vendor's responsibility in future Solicitations.

## 15. Recordkeeping; Audit.

**15.1. Scope of Records; Audit Right.** Throughout the Term, Vendor shall prepare and maintain in accordance with best industry practices, those books, records, accounts, reports, and other data pertaining to the Work, its performance under the Contract, those records and reports otherwise required to be prepared or provided pursuant to the Contract, and its business generally (collectively, the "Records"). To the extent applicable, all Records shall be kept in compliance with generally accepted accounting principles and show the actual cost of the Work, with details for labor, materials, supplies, and other components of the Work. Not more than once per year (unless the MTA has good cause for more frequent audits) and upon fourteen (14) days' prior written notice (each, an "Audit Notice"), the MTA and its designees shall have the right for any purpose and on any business day during normal business hours to examine, copy (and take full possession of said copies), and audit all Records, including Records of actual performance, Vendor personnel information (consistent with any restrictions imposed on Vendor by applicable law), all of the information within Vendor's possession or control relating to the Contract (including the Work), and Vendor's business operations (including information that Vendor considers confidential).

**15.2. Audit Location.** In the MTA's sole discretion, Vendor shall, within fourteen (14) days of the Audit Notice, either (i) deliver to an MTA-designated location all Records that the MTA requests, or (ii) make such Records available at any Vendor office located within New York City and, if Vendor does not maintain an office within New York City, then at Vendor's geographically closest office to New York City or other Vendor office that the MTA designates.

**15.3. Production of Copies; Audit Costs.** Promptly upon notice, Vendor shall deliver to an MTA-designated location copies of all requested Records in a form and format that the MTA reasonably requested. Vendor shall correct any Record inaccuracy within thirty (30) calendar days of the MTA's completion of an audit and immediately thereafter provide the corrected information to the MTA. Vendor shall be solely responsible for all costs associated with copying Records requested by the MTA and for all other costs Vendor incurs in connection with this Section 15 (Recordkeeping; Audit). The MTA shall be responsible for paying its auditor's fees.

**15.4. Record Preservation Obligations.** Vendor shall maintain all Records required under the Contract or otherwise kept by Vendor for a period of not less than seven (7) years after Contract termination or expiration, or such longer period as may be required by the MTA's record retention policy or as, mandated by applicable law. Notwithstanding the preceding sentence, Vendor shall continue to maintain all Records for as long as the MTA directs in the event of a litigation action or settlement of claims relating to the Contract occurs or, in the MTA's opinion, is likely to occur, and such period shall, at least, continue until the final disposition of all such litigation or claim.

## 16. Risk of Loss.

**16.1. Risk of Loss; Transfer.** Vendor assumes the risk of loss or damage to all Work to the fullest extent permitted by applicable law, irrespective of whether such loss or damage arises from acts or omissions (whether negligent or not) of the MTA, Vendor, or a third party, or from any other cause. The MTA and Vendor agree that the risk of loss or damage to the applicable portion of the Work shall transfer from Vendor to the MTA upon the MTA's acceptance of such Work pursuant to Section 5 (Review of Work; Acceptance and Rejection). Notwithstanding anything to the contrary, in no event shall the MTA's acceptance of Work constitute a waiver or otherwise relieve Vendor from fulfilling all of its obligations under the Contract, including completing all Work. If the MTA revokes its acceptance of Work pursuant to Section 5.1.3 (Effects of Acceptance), then Vendor shall bear the risk of loss or damage commencing on the date that such acceptance is revoked and thereafter Vendor shall retain such risk of loss or

damage unless and until of the MTA subsequently accepts the revoked Work.

**16.2. Risk of Loss Obligations.** Vendor's obligation with respect to Work for which Vendor holds the risk of loss or damage is to promptly repair, replace, and make good such loss or damage so as to restore the Work to the same character and condition as before the loss or damage occurred, all without cost to the MTA.

**16.3. Effect of MTA Holding Risk.** When risk of loss to the Work (or a portion thereof) is transferred to the MTA, the MTA shall thereafter assume responsibility for the care, protection, and ordinary upkeep for such Work, except to the extent that Vendor remains responsible for the Work or is otherwise responsible for loss or damage as provided in the Contract.

**16.4. Transfer of Title.** The MTA and Vendor agree that title for applicable portions of the Work shall transfer from Vendor to the MTA upon the earlier of (i) the transfer of the risk of loss pursuant to this Section 16 (Risk of Loss), and (ii) the MTA's request, including in connection with a Default Event. Vendor shall, at its sole cost and expense, execute and deliver or cause to be executed and delivered to the MTA all documents that the MTA requests to perfect, better perfect, or memorialize the transfer of title to the MTA free and clear of any liens and encumbrances. Vendor covenants and agrees that, upon any such transfer of title, the applicable portions of the Work shall not be subject to any lien or encumbrance except MTA-created liens and encumbrances.

**16.5. Risk of Loss and Transfer of Title for Custom Work.** Notwithstanding anything to the contrary, with respect to Custom Work, Vendor agrees that: (i) title to Custom Work shall pass immediately to the MTA upon the creation of such Custom Work; (ii) the risk of loss or damage shall not pass from Vendor to the MTA until the MTA both obtains physical possession of the Custom Work and accepts the same pursuant to Section 5 (Review of Work; Acceptance and Rejection); (iii) all Custom Work shall be identified as MTA Property; (iv) Vendor shall hold all Custom Work on consignment at Vendor's risk until such risk is transferred to the MTA as set out in this Section 16.5 (Risk of Loss and Transfer of Title for Custom Work); (v) Vendor shall use Custom Work solely for the performance of its obligations under the Contract; (vi) Custom Work is subject to the MTA's disposition at all times; and (vii) Custom Work (regardless of the state of completion) shall be immediately delivered to the MTA at an MTA-designated location upon request, all at Vendor's sole cost. While Custom Work is in Vendor's possession, Vendor shall (a) adequately store, maintain, inventory, and otherwise protect Custom Work, and (b) regularly provide to the MTA inventory reports of the Custom Work.

## **17. Safety.**

**17.1. Safety Measures.** If Vendor enters onto MTA Property in order to perform Work, then Vendor agrees to use all proper, necessary, and sufficient precautions, safeguards, personal protective equipment, and other protections to prevent accidents, injuries, or damage to any person or property (including the MTA, Vendor, and their respective employees). Vendor shall also be responsible for the payment of all sums of money resulting from such accidents, injuries, or damages and for the payment of all fines, penalties, and loss incurred by reason of the violation of any federal, state or local law or regulations.

**17.2. Material Safety Data Sheets.** Material Safety Data Sheets (each, an "MSDS") are required for any chemical or material transferred onto MTA Property that contains a toxic substance or hazardous chemical, or that may emit a toxic substance or hazardous chemical as defined in the New York State Right to Know Law (12 NYCRR Part 820) and Occupational Safety and Health Administration Hazard Communication Standard (29 CFR 1910.1200). Vendor represents and warrants that (i) it has submitted an initial MSDS with its Bid, and (ii) at any time during the Term, it shall immediately submit a new MSDS when Vendor determines that it will be transferring a toxic substance or hazardous chemical onto MTA Property. Each MSDS shall contain the information included in New York State Labor Law Section 876 for each substance, and shall otherwise be in compliance with 29 CFR 1910.1200(g) (including Appendix D of 2012).

**17.3. Safety Training.** If set out in the Contract Documents, or otherwise required by the MTA (including based on the MTA's policies and procedures), Vendor shall participate, at its sole cost and expense, in all safety training classes required in connection with the performance of the Work, and obtain and maintain all required safety permits and certifications.

### **17.4. Additional Safety Obligations.**

**17.4.1. Provision of Safety Devices.** In addition to any other applicable obligations, Vendor shall provide, at its sole cost and expense, all safety devices that are necessary, or that the MTA otherwise requires, for the protection of Vendor employees, MTA employees, the public, and any other persons, including personal protective equipment or "PPE" (collectively, the "Safety Devices"). Vendor's failure to provide Safety Devices shall constitute a Default Event. Vendor agrees to fully comply with all applicable regulations of the Occupational Safety and Health Act.

**17.4.2. Photo Identification; Compliance with MTA Rules and Regulations.** All Vendor personnel shall carry photo identification (each, a "Photo ID") at all times while performing Work or otherwise on MTA Property, and shall identify themselves and present such Photo IDs at any time when asked by MTA personnel, the MTA Police Department, the New York City Police Department, other police or peace officers, or other authorized government personnel. Such Photo IDs shall contain: (i) the personnel's name, picture, and name of employer; and (ii) such other information that the MTA requires. The Photo ID shall be clearly visible at all times while such personnel is performing Work or otherwise on MTA Property, and the Photo ID shall not be similar in appearance to MTA employee passes or ID cards. While on MTA Property, Vendor personnel shall otherwise observe all rules and regulations applicable to MTA employees.

**17.4.3. Removal of Vendor Personnel.** Vendor shall immediately prohibit from performing any Work those Vendor personnel found to be intoxicated, partaking of, or appearing to be under

the influence of, intoxicating or alcoholic beverages or controlled substances while providing the Work or during their break period. If, in the MTA's opinion, any Vendor personnel lacks the expertise to provide the Work or such individual is incompetent or disorderly, then the MTA shall notify Vendor of the same and Vendor shall immediately prevent such individual from providing any Work to the extent that doing so is not inconsistent with applicable law or collective bargaining agreements.

**17.4.4. Removal of Waste.** If the disposal or destruction of trash, waste, or other materials, is a required, necessary, or inherent part of the Work, then Vendor shall dispose of the same pursuant to all applicable safety and health regulations, codes, requirements, MTA policies and procedures, or as the MTA otherwise directs. Vendor shall follow all MTA-provided safety instructions.

**18. Insurance.** Throughout the Term, Vendor shall secure and maintain, at its sole cost and expense, all insurance coverage, in such forms and such amounts, as the MTA may require pursuant to the Contract and, at a minimum, General Liability and Auto Liability, each providing limits of not less than \$1 million and each policy naming the MTA and MTA Indemnitees as additional insureds; and Workers' Compensation and Disability insurance coverage for the benefit of employees who are required by law to be covered by such insurance. Vendor's failure to comply with such insurance requirements constitutes a Default Event. Prior to commencing any Work, Vendor must provide proof of insurance satisfactory to the MTA, in the MTA's sole and absolute discretion.

## **19. Termination.**

**19.1. Termination for Convenience.** The MTA shall have the right to terminate all, or any portion, of the Contract for any reason by providing written notice to Vendor, and any such termination shall be effective as of the date designated in the notice. In addition to any other applicable obligations set out herein, upon Vendor's receipt of such notice, Vendor shall: (i) immediately comply with the obligations set out in Section 20.1 (General Effect of Termination), and (ii) submit to the MTA within twenty (20) days of the Termination Date an invoice of Recoverable Termination Costs, with all supporting documentation that the MTA requests (the "Termination Invoice"). The term "Recoverable Termination Costs" means, collectively: (a) those fair and reasonable costs that Vendor has incurred prior to the Termination Date in connection with its performance under the Contract, and (b) outstanding amounts invoiced by Vendor pursuant to the Contract prior to the Termination Date. Vendor agrees that in no event shall Recoverable Termination Costs (1) exceed the difference between the Total Contract Price and the aggregate of all payments made by the MTA to Vendor pursuant to the Contract prior to the Termination Date, and (2) include indirect, incidental, special, or consequential damages of any kind or nature. Upon the MTA's receipt of a Termination Invoice, the parties shall meet and mutually agree to the amount of the Recoverable Termination Costs (the "Settlement Amount"). Vendor shall accept the Settlement Amount as full satisfaction of all claims against the MTA arising out of the termination of the Contract pursuant to this Section 19.1 (Termination for Convenience). Notwithstanding anything to the contrary, Vendor is to continue to perform all Work that is not subject to termination.

### **19.2. Termination for Default.**

**19.2.1. Notice of Default; Opportunity to Cure.** The MTA shall notify Vendor in writing if a Default Event occurs. If Vendor fails to cure the Default Event to the MTA's satisfaction within ten (10) days of such notice, then the MTA shall have the right to immediately terminate the Contract, in whole or in part, by providing Vendor with written notice of its intent to do so. The MTA's termination notice shall specify the date upon which Vendor is to discontinue all Work, and Vendor shall discontinue the Work on such date. Vendor shall continue to perform all Work that is not the subject of the MTA's termination notice.

**19.2.2. Default Event Remedies; Vendor Liability for Default Event.** If a Default Event occurs, then the MTA shall have the right to procure the same or similar Work under such terms and in such manner as the MTA deems appropriate, and Vendor shall be liable to the MTA for any excess costs of such Work, including the difference between the Total Contract Price and the amount that the MTA expends to complete the Work. Vendor shall also remain liable for all other liabilities and claims arising from the Contract, and the MTA has the right to deduct from monies due to Vendor all damages and other costs that the MTA incurs.

**19.2.3. Improper Termination.** If the MTA terminates the Contract pursuant to this Section 19.2 (Termination for Default), and the MTA subsequently determines that such termination was improper, unwarranted, or wrongful, then any such termination shall be deemed to have been a termination for convenience pursuant to Section 19.1 (Termination for Convenience). Vendor agrees that it shall not be entitled to any damages, allowance, or expenses of any kind other than as provided for in Section 19.1 (Termination for Convenience) in connection with any such termination.

## **20. Effect of Contract Termination or Expiration.**

**20.1. General Effect of Termination.** In addition to any other Vendor obligation set out in the Contract, upon receipt of a termination notice pursuant to Section 19 (Termination), and unless the MTA otherwise directs, Vendor shall immediately: (i) stop performing the applicable Work on the date specified in the notice (the "Termination Date"); (ii) take such action as may be necessary for the protection and preservation of the MTA's materials and property; (iii) cancel all cancelable orders for material and equipment; (iv) assign to the MTA, and deliver to the site or any other MTA-designated location, any non-cancelable orders for material and equipment that are not capable of use except in the performance of the Work and that have been specifically fabricated for the sole purpose of the Work but not incorporated in the Work; (v) take no action that increases the amounts payable by the MTA under the Contract; (vi) take all actions necessary to mitigate the MTA's liability; (vii) cease using all MTA assets, including Confidential Information; (viii) comply with the obligations set out in Section 23.7 (Treatment of



Confidential Information Upon Termination); (ix) provide to the MTA all documentation and other information that the MTA requests; and (x) otherwise comply with all MTA instructions regarding the disposition of completed and partially completed Work.

**20.2. Survival.** In addition to any other right or obligation that by its nature is intended to survive any Contract termination or expiration, the following Sections shall survive any such termination or expiration: (i) Section 9.1 (Vendor Warranty Obligations) (ii) Section 11 (Indemnification); (iii) Section 12 (Limit of Liability); (iv) Section 20 (Effect of Contract Termination or Expiration); (v) Section 23 (Confidentiality and Privacy); (vi) Section 24 (Disputes); and (vii) Section 29 (General).

**20.3. Transition Services.** In connection with any Contract termination or expiration, Vendor shall provide all transition assistance that the MTA requests in connection with transitioning the Work from Vendor to an MTA-designee (the "Transition Services"). Transition Services include those services that the MTA requests including, for example, the continued provision of the Work, personnel support, materials, information, and services necessary or desirable to facilitate transitioning from Vendor to an MTA-designee. Vendor shall be obligated to provide the Transition Services for no more than six (6) months following any Contract termination or expiration, and costs for such Transition Services shall be determined pursuant to Section 28 (Change Orders; Contract Modifications).

**21. Suspension of Work.** The MTA shall have the right to direct Vendor to suspend all or any part of the Work for a period of up to sixty (60) calendar days, and such direction shall be provided in writing (each, a "Work Stop Order"). Upon Vendor's receipt of a Work Stop Order, Vendor shall cease performing the applicable portion of the Work and take all steps necessary to minimize the incurrence of costs allocable to the applicable Work being suspended. Within sixty (60) days of the MTA's provision of a Work Stop Order, the MTA shall either cancel the Work Stop Order, terminate the Contract, or issue a Change Order that removes such Work from the Contract. The MTA shall, in its reasonable discretion, make an equitable adjustment to the delivery schedule or Total Contract Price (excluding profit) due to the Work Stop Order. Vendor shall immediately resume its performance of the Work upon cancellation of a Work Stop Order regardless of whether the MTA has made such an equitable adjustment. Vendor shall be prohibited from submitting any claims for compensation relating to a Work Stop Order unless such claims are submitted in writing within twenty (20) days after the MTA's issuance of a Work Stop Order. Notwithstanding anything to the contrary, if the MTA determines that the suspension of Work was necessary due to Vendor's defective or incorrect Work, unsafe work conditions caused by Vendor, or any other reason caused by Vendor's acts or omissions, then Vendor shall not be entitled to an equitable adjustment.

**22. No Waiver; Remedies.** The MTA's failure to require Vendor's performance of any obligation under the Contract shall not affect the MTA's full right to require such performance at any time thereafter, nor shall the MTA's waiver of a breach of any obligation under the Contract be taken, held, or interpreted as a waiver of the obligation itself or any past or subsequent breaches of the same obligation. The MTA shall have the right to avail itself of each and every remedy relating to, or arising from, the Contract available to the MTA now or hereafter, existing at law or in equity or by statute, and each and every such remedy shall be in addition to every other remedy so specifically given or otherwise so existing and may be exercised from time to time and as often and in such order as may be deemed expedient by the MTA. The MTA's exercise, or the beginning to exercise, one remedy shall not be deemed a waiver of the right to exercise, at the same time or thereafter, any other remedy.

**23. Confidentiality and Privacy.**

**23.1. Confidential Information; Non-Disclosure and Standard.** Vendor shall treat as confidential all information that is disclosed or provided to Vendor (or to which Vendor otherwise has access), whether oral or in writing, in connection with the Contract (collectively, the "Confidential Information"). The term "Confidential Information" expressly includes MTA Data. Vendor shall not use Confidential Information for any purpose not expressly permitted in the Contract (and in all cases such Confidential Information shall only be used for the MTA's benefit), and Vendor shall disclose such Confidential Information only to those employees, contractors, subcontractors, suppliers, and agents who have a need-to-know basis for access to such Confidential Information for the purpose of performing under the Contract; provided, however, that such recipients are under a duty of confidentiality no less restrictive than Vendor's duty hereunder and by applicable law. Vendor shall protect the Confidential Information from unauthorized use, access, or disclosure in the same manner as Vendor protects its own confidential or proprietary information, but shall in no event use less than a reasonable standard of care and diligence. Upon the MTA's request, Vendor shall promptly provide copies of any requested Confidential Information in electronic form, all at Vendor's sole cost and expense.

**23.2. Exceptions.** Except for Security-Sensitive Information and Personal Information, for which there shall be no exception, Vendor's obligations with respect to Confidential Information shall not apply to Confidential Information that Vendor can demonstrate in writing (to the MTA's satisfaction): (i) was already known to Vendor at the time of disclosure by the MTA; (ii) was or becomes available to Vendor on a non-confidential basis from a third party, provided that such third party is not bound by a confidentiality obligation to the MTA with respect to such Confidential Information; (iii) is or has become generally available to the public through no fault of Vendor; (iv) is independently developed by Vendor without access to, or use of, the Confidential Information, as evidenced through proper documentation; or (v) is required by law to be disclosed, provided that Vendor notifies the MTA of such required disclosure promptly and in writing, and cooperates with the MTA, at the MTA's reasonable request and expense, in any lawful action to contest or limit the scope of such disclosure.

**23.3. Public Records.** Notwithstanding anything to the contrary, Vendor acknowledges that (i) the MTA may be subject to the New York State Freedom of Information Law (N.Y. Pub. Off.

Law sec. 84 *et seq.*) and other laws relating to the disclosure or production of information in the MTA's possession (collectively, the "Public Records Law"), and (ii) any documents in the MTA's possession may be subject to the Public Records Law.

**23.4. No Transmission of Confidential Information Outside of the United States.** In no event shall Vendor transmit, transfer, or otherwise store Confidential Information (including Security-Sensitive Information and Personal Information) outside of the United States without the MTA's prior written approval, which can be withheld or withdrawn for any reason.

**23.5. Privacy Notice.** The relevant provisions of the New York Personal Privacy Protection Law (Article 6-A of the Public Officers Law) shall apply to the Contract as if Vendor were an agency of the State of New York as defined therein. If, in connection with Vendor's performance under the Contract, Vendor receives or otherwise has possession, control of, or access to, Personal Information, then Vendor shall receive, maintain, and use such Personal Information solely for the purpose of performing its obligations under the Contract and for no other purpose. If Vendor receives a request for the disclosure of Personal Information to any person or entity not expressly authorized under the Contract to receive the same, then Vendor shall not comply with the request and shall instead promptly notify the Project Manager. If Vendor is required by law to comply with the request, to the extent lawful, then Vendor shall delay complying with the request until Vendor notifies the MTA's General Counsel in the most expeditious manner possible and affords the MTA with an opportunity to lawfully oppose such request.

**23.6. Information Security.**

**23.6.1. Information Security Program.** Vendor represents and warrants that it has established, and shall maintain and comply with throughout the Term, an information security program that meets all applicable federal, state and local laws, and regulations. Vendor agrees that its information security program includes administrative, technical, and physical safeguards that sufficiently: (i) protect the security, confidentiality, and integrity of Confidential Information; (ii) protect against anticipated threats or hazards to the security, confidentiality, and integrity of Confidential Information; (iii) protect against unauthorized access to or use of Confidential Information; (iv) ensure compliance with an active incident response program; and (v) ensure the proper disposal of Confidential Information. Notwithstanding anything to the contrary, Vendor further agrees to comply with all applicable federal, state, local, and foreign data protection laws, and all other applicable regulations and directives in connection with its collection, access, use, storage, disposal, and disclosure of Confidential Information (including Security-Sensitive Information and Personal Information).

**23.6.2. Security Incident Response.** The term "Security Incident" means the actual or potential breach of the security, confidentiality, or integrity of Confidential Information, regardless of whether such breach requires disclosure under applicable law. In the event of a Security Incident, Vendor shall notify the MTA in the most expedient time possible and, in no event, more than five (5) hours after the suspicion, discovery, or notification of a Security Incident. Such notification shall be sent via email to the Project Manager and the receipt of such email shall be immediately confirmed via telephone. The Security Incident notification shall be written and include to the extent known: (i) a detailed description of the Security Incident; (ii) the specific Confidential Information impacted; (iii) measures taken by Vendor to identify, prevent, and mitigate the effects of the Security Incident; and (v) any other relevant information and documentation that the MTA requests. Vendor shall update the notice with additional information upon the MTA's request.

**23.6.3. Security Incident Remedial Steps.** Unless otherwise required or prohibited by law, Vendor shall not disclose to any third party the occurrence of, or any information relating to, a Security Incident without the MTA's prior written approval. Subject to the preceding sentence, upon discovery or notification of a Security Incident, Vendor shall take immediate action, at its own expense and in compliance with applicable law, to: (i) investigate the Security Incident; (ii) identify, prevent, and mitigate the effects of the Security Incident; (iii) perform all other actions reasonably necessary to remedy the Security Incident, prevent future incidents of the same or similar nature, and otherwise restore the confidentiality, security, and integrity of Confidential Information in Vendor's possession or control; and (iv) perform those actions and provide the support reasonably requested by the MTA. Vendor shall, at the MTA's direction, pay for or reimburse the MTA for all damages, costs, losses, fines, penalties, and expenses related to a Security Incident, including those incurred by the MTA in connection with preparing and providing notice to impacted data subjects, as well as other related support services such as credit monitoring services and call center services.

**23.6.4. Security Review.** Upon reasonable notice, the MTA shall be entitled to engage a qualified, independent third party (a "Security Reviewer") to audit Vendor's compliance with its information security obligations set out in the Contract (each, a "Security Compliance Audit"). A Security Compliance Audit shall not take place more than once in any calendar year, unless good cause is found by the MTA to warrant more frequent audits. The MTA shall be responsible for the fees and expenses of the Security Reviewer (the "Reviewer Fees"), unless the results of the Security Compliance Audit demonstrate Vendor's material non-compliance with its obligations, in which case Vendor shall reimburse the MTA its reasonable Reviewer Fees upon submission of supporting documentation. The assessments, work papers, and other materials generated or used by the Security Reviewer during the course of the Security Compliance Audit shall be treated as Confidential Information.

**23.7. Treatment of Confidential Information Upon Termination.** Upon termination or expiration of the Contract for any reason, or promptly upon the MTA's request, Vendor shall at its sole cost and expense and at the MTA's direction either: (i) return to the MTA all Confidential Information (including copies and other derivatives of the same) in Vendor's possession, custody, or control, or (ii) irrevocably destroy such Confidential Information (including copies and other derivatives of the same) and certify in writing to such destruction.

**24. Disputes.** This Section 24 (Disputes) sets out Vendor's sole means for challenging any question of fact arising out of, or in any way relating to, the Contract post-award (each, a "Dispute"). The MTA and Vendor agree that exhausting the dispute resolution procedure set out in this Section 24 (Disputes), including the judicial relief available herein, shall be Vendor's sole remedy in connection with a Dispute. If Vendor initiates a Dispute, then the MTA and Vendor shall proceed as follows:

**24.1. Dispute Resolution; Escalation.** Vendor shall have the right to initiate a Dispute by notifying the Project Manager in writing within ten (10) days of when Vendor knows, or should have known, about the subject of the Dispute (each, a "Dispute Notice"). The Dispute Notice shall include a detailed description of the Dispute and Vendor's proposed resolution to the same. Upon receipt of a Dispute Notice, the Key Person and the Project Manager shall meet informally and use good faith efforts to resolve the Dispute without further escalation, and the Project Manager shall notify Vendor of the decision. The Project Manager's decision shall be final and binding on the parties unless, within ten (10) days from the date of Vendor's receipt of such decision, Vendor submits a written appeal to the Project Manager. Upon receipt of said appeal the Dispute shall be escalated to the MTA Chief Procurement Officer and a Vendor "c-level" executive for resolution, and the MTA Chief Procurement Officer shall appoint a dispute resolution officer to review and recommend a written decision to the MTA Chief Procurement Officer, who reserves the right to accept, modify or reject and issue the written decision and provide a copy of the same to Vendor. The MTA Chief Procurement Officer's decision regarding the appeal shall be final and binding on the parties.

**24.2. Disputes; Judicial Relief.** If the parties are unable to resolve a Vendor-initiated Dispute after exhausting the Dispute resolution process set out in Section 24.1 (Dispute Resolution; Escalation), then subject to Section 29.2 (Governing Law; Venue), Vendor's sole remedy shall be to seek review in the form of a challenge of the decision in a court of competent jurisdiction under Article 78 of the New York Civil Practice Law and Rules.

**24.3. Vendor Performance During the Pendency of Disputes.** Vendor agrees that: (i) the pendency of a Dispute (including those subject to Section 24.2 (Disputes; Judicial Relief)) shall not constitute a basis for any modification, limitation, or suspension of Vendor's obligations under the Contract, and Vendor shall diligently perform its obligations in compliance with the Contract and the MTA's orders; (ii) Vendor shall remain fully obligated to perform the Work notwithstanding the existence of a Dispute; and (iii) pending final settlement of the applicable Dispute, Vendor shall perform all obligations under the Contract, including those that are the subject of a Dispute, in the manner that the MTA directs.

**25. Training Services.** Vendor shall provide the MTA all training required by the Contract (the "Training Services") in accordance with the following:

**25.1. Training Materials; Training.** The MTA shall have the right to review and approve all materials that Vendor will provide with the Training Services (the "Training Materials"). Except for Custom Training Materials, Vendor shall provide all Training Materials to the MTA thirty (30) days prior to commencing any training portions of Training Services (the "Training Date"). If the Training Materials contain MTA Data (the "Custom Training Materials"), then Vendor shall provide the MTA with the Custom Training Materials at least sixty (60) days prior to the Training Date, unless the parties mutually agree to a different timeframe. The MTA shall provide Vendor with any revisions, comments, or suggestions to the Custom Training Materials (collectively, the "MTA Revisions") within thirty (30) days of its receipt of the Custom Training Materials, or such shorter period as agreed between the parties. Vendor shall complete all MTA Revisions at no additional cost to the MTA and provide the MTA with the revised Custom Training Materials at least one (1) week prior to the Training Date, unless otherwise agreed in writing by the MTA. All Training Material shall be: (i) sufficiently detailed; (ii) easily understandable so that a person of ordinary intelligence can understand its contents; and (iii) in English and any other MTA-identified language. Vendor shall provide the Training Materials in both print and a nonproprietary industry standard electronic format. All training shall take place at MTA-designated locations. Vendor shall comply with all building security, MTA IT security, or other requirements provided to Vendor within a reasonable time in advance of the Training Date when conducting Training Services on MTA Property. Unless otherwise stated in the Contract, the Training Services shall include "train the trainer" services, which is a technique that teaches students to be teachers themselves.

**25.2. Changes to Training Services.** The parties may mutually agree in writing as to training content, delivery medium, class size, trainer requirements, and cancellation terms. Notwithstanding the foregoing, in no event shall the MTA be responsible for cancellation fee(s) if the MTA provides at least three (3) days' written notice of a postponement or cancellation.

**26. Project Management.** Vendor shall at all times employ, maintain, and assign to the Contract a sufficient number of competent and qualified personnel to meet the requirements for the Work, including at least one (1) "Key Person". A Key Person shall: (i) be dedicated full time to the Contract or, if not dedicated full time to the Contract, have the Contract as her or his highest priority; (ii) keep the MTA fully informed as to Vendor's performance of the Work; (iii) participate in person, or remotely with the MTA's consent, in regularly scheduled and any unscheduled meetings; (iv) issue reports as reasonably requested by the MTA or as otherwise required by the Contract; (v) not be removed by Vendor without the MTA's consent in writing in advance, unless such removal is outside of Vendor's control (e.g., death); (vi) be removed at the MTA's request; and (vii) be replaced only by a person approved in advance in writing by the MTA. A Key Person shall also serve as a Vendor project manager and, if the Contract requires installation or other building services, then a Key Person shall remain onsite while any Work is being performed, unless otherwise required by the Contract or authorized in writing by the MTA. The MTA reserves the right to review resumes, curriculum vitae, and other Key Person certification documents. Vendor shall identify any Key Person(s) in writing to the MTA on or before the Effective Date.

**27. Subcontracting.**

**27.1. Vendor Subcontract Request; Conditions.** Vendor shall perform the Work itself, and Vendor shall not permit any third parties to perform any portion of the Work without the MTA's prior written approval, which may be withheld or conditioned in the MTA's sole discretion. If Vendor desires to subcontract any portion of the Work, then Vendor shall submit a request to the Project Manager at least twenty (20) days prior to the proposed commencement date of the subcontractor's performance. Such request shall include: (i) the Contract number; (ii) a description of the Work to be subcontracted; (iii) the commencement and completion dates for the Work; (iv) the amount to be paid to the subcontractor; (v) the subcontractor's name, resume of similar work performed by the subcontractor, and relevant client contacts and telephone numbers; (vi) the proposed agreement between Vendor and the subcontractor for the Work; and (vii) any other information that the MTA requests, including any and all affirmations, certifications and other forms typically required of a Vendor. If the MTA approves of the request to subcontract Work, then the terms and conditions of the Contract shall apply to such approved subcontractor. The MTA's approval of a subcontractor shall not operate as a waiver of any right against Vendor or other third parties, nor shall it relieve Vendor of any of its obligations to perform the Work as set forth in the Contract, including those portions of the Work that were subcontracted. The MTA shall have no liability for any subcontractor-performed Work unless the MTA has provided prior written approval for the specific subcontractors and the specific Work performed by such subcontractor pursuant to this Section 27 (Subcontracting).

**27.2. Vendor Subcontractor Liability.** If Vendor engages subcontractors in connection with the Contract, then Vendor agrees that it shall remain fully and directly liable for all obligations under the Contract as though no such subcontracting had occurred. Vendor shall be solely responsible for ensuring that any subcontractors it engages fully comply with Vendor's obligations under the Contract as if such subcontractor were Vendor.

**28. Change Orders; Contract Modifications.**

**28.1. MTA Notice of Change Orders; Determination of Price and Time.** The MTA shall have the right, in its sole discretion, to order changes to the Work that result in additions or subtractions to the amount, type, or value of the Work, provided that such changes are within the general scope of the Work. Adjustments to the Total Contract Price (either increases or reductions) due to such order shall be based on the rates included in the Price Schedule for equivalent Work, as determined by the MTA. If the MTA-ordered change involves Work for which there are no equivalent rates included in the Price Schedule, or otherwise impacts Vendor's time for performance, then the MTA and Vendor shall negotiate adjustments to the Total Contract Price, performance schedule, and any other necessary contract terms to address such Work. Such negotiated changes shall be memorialized in a written document that is executed by the MTA and Vendor and that references the Contract (each, a "Change Order" or "Supplemental Agreement"). If the MTA and Vendor are unable to reach agreement on a Change Order, then the Manager shall have the right to direct Vendor in writing to proceed with the Work that is subject to the negotiations, and Vendor shall fully comply with such direction; provided, however, that Vendor shall have the right to initiate a Dispute within five (5) days of such direction to proceed pursuant to Section 24 (Disputes).

**28.2. Vendor Notice of Changes.** Vendor shall promptly notify the MTA in writing if Vendor believes that there has been a change to the amount, type, or value of the Work required pursuant to the Contract, unless such change is the subject of a Change Order. The MTA shall promptly review such notice and shall make a final and binding decision as to whether such alleged change is in fact a change to the amount, type, or value of the Work. If the MTA agrees that such alleged change is in fact a change to the amount, type, or value of the Work, then the MTA and Vendor shall proceed pursuant to Section 28.1 (MTA Notice of Change Orders; Determination of Price and Time).

**28.3. Contract Modifications; Authority.** The only MTA representative authorized to execute a Change Order or other modification to the Contract is the MTA's Chief Procurement Officer (or her or his designee), and any such Change Order or other modification must be in writing. No other person is authorized to execute a Change Order or otherwise modify the Contract, either in writing or orally. No change in, modification to, termination, or discharge of the Contract in any form whatsoever, shall be valid or enforceable unless it is in writing and signed by the party to be charged therewith or her duly authorized representative; provided, however, that any change in or modification, termination, or discharge of the Contract expressly provided for in the Contract shall be effective as so provided.

**28.4. Limitations on Change Order Compensation.** Notwithstanding anything to the contrary, in no event shall (i) Vendor's compensation for Change Order Work that Vendor performs directly exceed Vendor's actual cost for the Change Order Work, plus a combined profit and home office overhead rate that is a negotiated percentage of the direct labor and material costs, and (ii) Vendor's compensation for Change Order Work performed by subcontractors shall not exceed Vendor's actual cost for the Change Order Work, plus an additional amount not to exceed five percent (5%) of such actual costs in order to cover Vendor's profit, superintendence, administration, insurance, G&A and other overhead expenses, and all other Vendor costs and expenses. Vendor agrees that any compensation that it proposes for Change Order Work must be allowable under the cost principles of Federal Acquisition Regulation (FAR), Part 31.2.

**29. General.**

**29.1. MTA Vendor Code of Ethics.** Vendor agrees throughout the Term (i) to comply with the MTA Vendor Code of Ethics, (available at: [https://new.mta.info/sites/default/files/2018-05/Vendor\\_Code\\_of\\_Ethics.pdf](https://new.mta.info/sites/default/files/2018-05/Vendor_Code_of_Ethics.pdf)), and (ii) to report to the MTA any change in circumstance, including conflicts of interest, that materially impacts the previously-submitted "Bidder's Certification of Compliance with the Vendor Code of Ethics" or subsequent update(s) submitted

to the MTA. Vendor further agrees throughout the Term to comply with the MTA's Zero Tolerance Policy, which generally prohibits Vendor from giving a gift of any value, including entertainment and meals, to MTA officers, directors, and employees.

**29.2. Governing Law; Venue.** The Contract shall be governed and construed in all respects in accordance with the laws of the State of New York without regard to any conflicts of laws principles. The exclusive venue and jurisdiction for any action or proceeding arising out of the Contract shall be the state and federal courts located in New York County, New York. Vendor accepts the personal jurisdiction of such courts.

**29.3. Full Cooperation; Coordination.** Vendor agrees to cooperate at all times with the MTA and other third parties (including other MTA vendors) and to coordinate its Work with the MTA's requirements. If the MTA determines that it is necessary for the MTA or third parties to perform work on the site where the Work is being performed, then the MTA shall have the right to access said site and to permit such other third parties to access such site at such times and under such conditions that do not unreasonably interfere with Vendor's performance of the Work. Vendor shall continue to perform its Work diligently and in a manner that minimizes interference with such other work.

**29.4. Notices.** Any notices required or permitted under the Contract shall be given to the appropriate party at the address designated by the MTA or Vendor in writing. All notices hereunder must be in writing, in accordance with the Contract, unless expressly indicated otherwise. Such notices shall be deemed given: (i) upon personal delivery; (ii) if sent by facsimile, upon confirmation of receipt; or (iii) if sent by certified or registered mail, postage prepaid, five (5) calendar days after the date of mailing.

**29.5. Vendor Employees; Relationship.** The MTA and Vendor are independent contractors, and no agency, partnership, joint venture, or employer-employee relationship is intended or created by the Contract. Vendor shall not hold itself out as or claim to be an MTA officer or employee, or otherwise make a claim, demand, or application to or for any right or privilege applicable to an officer or employee of the MTA, including claims for Workers' Compensation coverage, Unemployment Insurance benefits, health insurance, life insurance, Social Security coverage, or retirement membership or credit. Vendor shall exercise full control over and supervision of the employment, direction, compensation (including deducting any required withholding taxes and other expenses associated with the employees' employment), discharge, and benefits of its officers and employees, including employees of subcontractors, and of all other persons assisting it in the performance of the Work.

**29.6. Loss or Damage to MTA Property.** Vendor shall care for and protect all tangible and intangible MTA Property with which Vendor comes into possession, custody, or to which Vendor otherwise has access, and Vendor shall, at its sole cost and expense, repair or restore any such property that is lost or damaged attributable to Vendor to the condition that such MTA Property was in prior to such loss or damage.

**29.7. Communications.** Communications shall be in writing and shall be delivered to each party's designee. Telephone calls may be used to expedite communications but shall not be official communications unless confirmed in writing with the designees. Communications shall be considered received at the time actually received by the designee.

**29.8. Headings; Severability.** Headings used herein are for reference purposes only and in no way define, limit, or construe the scope or extent of such section or in any way otherwise affect the Contract. If any Contract provision is determined to be unenforceable or invalid by applicable law or court decision, such enforceability or invalidity shall not render the Contract unenforceable or invalid as a whole and, in such event, such provision shall be changed and interpreted so as to best accomplish the objectives of such provision within the limits of applicable law or court decision.

**29.9. Assignment; Succession.** Vendor shall not assign, transfer, convey, sublet, or otherwise dispose of the Contract or its right, title, or interest therein, or its power to execute the Contract to any other person, firm, or entity without the MTA's prior written consent, which may be withheld, conditioned, or delayed in the MTA's sole discretion (provided that Vendor may assign monies due or to become due to Vendor under the Contract upon prior written notice to the MTA and the MTA's written acknowledgment of the same). Vendor's breach of the preceding sentence shall constitute a Default Event and the MTA shall have all rights and remedies available to it under law and in equity, including terminating the Contract. If there is an assignment of monies due or to become due under the Contract, or a change in control of Vendor, then Vendor shall immediately provide the MTA with all information, documentation, and authorizations that the MTA determines to be appropriate. The Contract, including the rights, duties, and obligations, shall bind and inure to the benefit of the successors and assigns of the MTA and Vendor. Nothing herein shall either restrict Vendor's right to assign monies due or to become due pursuant to NYS Uniform Commercial Code Section 9-318 or, subject to Section 8.6 (Bankruptcy Code Section 365(n)) be construed to hinder, prevent, or affect Vendor's assignment for the benefit of creditors that is made pursuant to applicable law.

**29.10. Freedom of Action.** The MTA is free and without restriction to procure any goods and services as it sees fit, and to engage other third parties to assist in the same or otherwise provide goods and services, including those that compete directly with Vendor.

**29.11. No Publicity.** To the fullest extent permitted by law, Vendor shall not publicize, issue, or disclose any release, statement, or other information relating to the Work or the MTA in any manner, including in advertisements, publications, press releases, articles, websites, social media, or speeches, without the MTA's prior written approval, which may be withheld or withdrawn for any reason.

**29.12. Access to MTA Data.** The MTA shall have full access at all times to all MTA Data (including drafts of MTA Data and documentation related to Work contemplated in the Contract) that are within Vendor's possession or control. Vendor shall immediately provide the MTA with

copies of all such MTA Data upon the MTA's request. As with all other Vendor obligations under the Contract, Vendor's obligation set out in this Section 29.12 (Access to MTA Data) shall apply regardless of whether Vendor disputes what constitutes MTA Data or is otherwise asserting a right to withhold such MTA Data from the MTA.

**29.13. Format of Deliverables; Instructions.**

**29.13.1. Deliverable Format.** For all Work and MTA Data that is documentable or otherwise written, Vendor shall provide such Work and MTA Data to the MTA in an MTA-requested form, format, and medium (e.g., via email, hard copy, MS Word, .PDF, etc.).

**29.13.2. Clarifying Instructions.** If required by the Contract or best industry practices, Vendor shall deliver as part of the Work, written materials in sufficient detail and clarity, and with sufficient explanation and information, to enable the MTA to understand, apply, modify, and maintain such Work without further assistance from Vendor or other third parties.

**29.14. Entire Agreement.**

**29.14.1. No Vendor Modifications to Contract Documents.** Subject to Section 28 (Change Orders; Contract Modifications), the Contract Documents include only those terms and conditions with which the MTA shall agree in connection with the Solicitation. The term "Modifying Bid Terms" means any terms and conditions included with, attached to, or referenced in the submitted Bid or otherwise discussed during the procurement process, that modify or conflict with the Contract Documents, or otherwise constitute an exception to the terms and conditions included in the Contract Documents. Vendor agrees that all Modifying Bid Terms shall not be binding on the MTA, deemed excluded from its Bid, and provided by Vendor solely for informational and promotional purposes. The MTA shall have the sole and absolute discretion to determine whether a particular term or condition constitutes an excluded Modifying Bid Term or part of the accepted Bid.

**29.14.2. Entire Agreement.** Subject to Section 29.14.1 (No Vendor Modifications to Contract Documents), the Contract constitutes the entire agreement between the MTA and Vendor concerning the subject matter herein. No terms or conditions (whether written or based on performance or course of conduct) that modify the Contract (the "Additional Terms") shall be binding on the MTA, unless agreed to pursuant to Section 28 (Change Orders; Contract Modifications). Vendor expressly agrees that the Contract shall not include (i) any Additional Terms that Vendor affixes to, incorporates into, or otherwise provides with the Work (including standard pre-printed or custom order forms, product literature, "shrink wrap" terms accompanying software delivery, "click-through" agreements, order forms, invoices, or other documents Vendor provides to the MTA for payment), regardless of whether the MTA accepts such Additional Terms via an approval, payment, or other action signifying its acceptance to such Additional Terms, or (ii) any Additional Terms that are otherwise presented to the MTA and not accepted pursuant to Section 28 (Change Orders; Contract Modifications). By way of clarification, and not limitation, in no event shall any term or condition included in the Bid that the MTA determines to modify the Contract Documents so modify the Contract Documents or otherwise be incorporated into the Contract. The MTA shall not be liable or obligated for any goods, services, or other costs that are not expressly set out in the Contract.

**29.15. Multi-Agency Use.** Vendor agrees that any MTA affiliate or subsidiary can utilize the same pricing, terms, and conditions set out in the Contract.

**29.16. Force Majeure.** Neither party shall be liable to the other party for delays or any failure to perform an obligation under the Contract due to causes beyond its reasonable control and that are not caused or attributable to the fault or negligence of the party delayed (the "Delayed Party") (each, a "Force Majeure Event"). Such Force Majeure Events include, but are not limited to, fire, explosion, flood or other natural catastrophe, terrorism, legislation, governmental orders, regulation, or labor strikes. However, the Delayed Party shall use its best efforts to minimize the delays caused by any such Force Majeure Event. In addition, if Vendor seeks relief for a Force Majeure Event, then it must notify the MTA promptly, and in no case more than two (2) days after, the occurrence of a Force Majeure Event, and provide the MTA with a reasonable plan to resume performance. Upon such notice, Vendor shall take all commercially reasonable steps to mitigate the effect of the Force Majeure Event. If Vendor fails to: (i) promptly notify the MTA of the Force Majeure Event; (ii) provide to the MTA a reasonable plan to resume performance; or (iii) mitigate the effects of the Force Majeure Event, then Vendor's performance shall not be considered excused pursuant to this Section 29.16 (Force Majeure).

**29.17. Determination of Ambiguities; Order of Precedence.** The MTA shall have the sole right to resolve any errors, inconsistencies, ambiguities, or discrepancies, including typographical errors in the Contract, and Vendor agrees to be bound by such resolutions. Unless the Project Manager determines otherwise, in the event of a conflict or inconsistency between or among portions of the Contract, the more stringent provision or requirement shall control, except for situations in which no provision is clearly more stringent, in which case the Project Manager shall generally apply the following order of precedence in the following descending order: (i) these Terms and Conditions; (ii) the Contract Documents other than these Terms and Conditions, including all forms, certifications, and attachments; and (iii) the Bid. In no event shall the order of precedence supersede applicable law unless the Project Manager determines that the requirements set out herein are more stringent than those established by applicable law.

**30. Certain Information Technology Requirements.** Additional terms applicable to Work involving information technology are incorporated into, and attached to, these Terms and Conditions as Schedule 2 (Certain IT Requirements). Vendor shall comply with all of the requirements included in Schedule 2 (Certain IT Requirements) for all portions of the Work unless the Manager notified Bidders in writing during the procurement process that certain portions of the Work are not subject to Schedule 2 (Certain IT Requirements).



## **SCHEDULE 1: APPLICABLE LAWS AND REGULATIONS**

### **1. Schedule 1 Interpretative Rules.**

**1.1. Defined Terms.** Subject to Section 1.2 (Applicability to Bidders), capitalized terms used in this Schedule 1 (Applicable Laws and Regulations) that are not defined herein have the meanings ascribed to them in the Terms and Conditions.

**1.2. Applicability to Bidders.** The obligations in this Schedule 1 (Applicable Laws and Regulations) include those that apply to both (i) any individual or entity submitting a Bid in response to a Solicitation, and (ii) the Vendor to which the Contract is awarded. Accordingly, and for purposes of this Schedule 1 (Applicable Laws and Regulations), all references to the terms "Vendor", "Bidder", "proposer", and other similar terms shall be interpreted to mean and include Vendor and any individual or entity submitting a Bid in response to the Solicitation. All individuals and entities submitting Bids in response to the Solicitation must comply with those obligations herein that pertain during the procurement process, and the selected Vendor must comply with all applicable obligations herein throughout the Term.

**1.3. Other Agencies.** The MTA is the entity issuing the Solicitation and entering into the Contract with Vendor. In many instances, however, the Solicitation is intended to procure Work for an MTA subsidiary or affiliate (e.g., Metro-North Railroad, Long Island Rail Road, and New York City Transit). To this end, and unless the Contract Manager directs otherwise in writing, Vendor agrees that its obligations set out in this Schedule 1 (Applicable Laws and Regulations) shall apply to both the MTA and the MTA subsidiary or affiliate for which the Work is being procured, regardless of whether this Schedule 1 (Applicable Laws and Regulations) specifically identifies the MTA subsidiary or affiliate.

**1.4. Interpretative Decisions.** The MTA shall have the sole right to resolve any errors, inconsistencies, ambiguities, discrepancies, or questions regarding the interpretative rules (set out in this Section 1 (Schedule 1 Interpretative Rules)) and their application, and Vendor agrees to be bound by such resolutions.

### **2. New York State Labor Law.**

**2.1. Compliance with New York State Labor Law.** Vendor shall comply with applicable requirements of the New York State Labor Law, as amended and supplemented (the "**NY Labor Law**"). Specifically, if any Work falls within the purview of the NY Labor Law, Vendor (and its subcontractors) shall comply with said NY Labor Law with respect to any such portion of the Work, including NY Labor Law Sections 220, 220-f, 222-a, and 230. Vendor shall ensure that no laborer, workman, or mechanic that Vendor (or its subcontractors or other persons) employs to do Work shall be permitted or required to work more than eight (8) hours in any one calendar day or more than five (5) days in any one calendar (1) week, except in cases of extraordinary emergency as defined in NY Labor Law Section 220. If additional time beyond that which is permitted is necessary to complete the Work within the Contract time limits, then the MTA shall work with Vendor to apply for and obtain the requisite exemptions. Vendor shall, and shall ensure that its subcontractors (or other persons doing or contracting to do the Work), pay all wages for a legal day's work (as defined by law) to all classes of such laborers, workmen, or mechanics for the Work and related materials in an amount that is not less than the prevailing rate of a day's work in the same trade or occupation at the time the Work is performed and in the same locality (as defined in NY Labor Law Sections 220 and 230) where the completed Work is to be situated, erected, or used, and such amounts shall be paid in cash except as otherwise permitted in NY Labor Law Sections 220 or 230. Failure to comply with the NY Labor Law shall constitute a Default Event and render the Contract void.

**2.2. Wage Rates; Certified Payrolls.** Pursuant to NY Labor Law Section 220, the New York State Commission of Labor has determined the schedule of supplements to be provided and wages to be paid to workmen, laborers, and mechanics engaged in the Work. To the extent that NY Labor Law Section 220 applies, Vendor agrees that: (i) it and all subcontractors shall comply with such schedule of supplements and wages, (ii) it shall submit to the MTA certified payrolls (attested to by a duly authorized Vendor representative) for Vendor and all subcontractors, enumerating all payments to, or on behalf of, persons employed in connection with the Work, with such submissions at intervals agreed upon between Vendor and the Project Manager, but not less frequently than once per month.

**3. MTA Capital Program Review Board.** The Contract constitutes a special obligation of the MTA, payable solely from any one or combination of the following funding sources: (i) proceeds of grants or other monies paid or made available by any combination of the Federal government, the State, or the City to or on behalf of the MTA for the Contract or for the project encompassing the Work; (ii) proceeds of the MTA Transit Facilities Service Contract Bonds; (iii) monies that the Triborough Bridge and Tunnel Authority made available to the MTA for the Contract; (iv) net proceeds that the MTA realized from the sale-leaseback or "safe-harbor" leasing of assets constituting transit projects; or (v) monies made available to the MTA for the Contract other than monies paid or payable under the note issued pursuant to the Financing Contract dated July 1, 1982. The MTA represents that, to the extent applicable, the Contract or the project encompassing the Work is included within the Capital Program Plan for transit facilities approved by the MTA Capital Program Review Board (established pursuant to New York State Public Authorities Law (the "**NY Public Authorities Law**") Section 1269-a), and that estimated receipts from the funding sources identified above are enumerated in such Plan in amounts adequate to fund the Contract, in accordance with NY Public Authorities Law Section 1269-b.

**4. Net Neutrality.** In accordance with the requirements of Executive Order No. 175 ("**EO 175**"), Vendor shall adhere to net neutrality principles in the provision of internet services under this Contract, regardless of delivery method unless the MTA Managing Director, or their designee, determines that adherence to net neutrality principles for a particular purpose is not in the best interests of the State. Nothing in this provision supersedes any obligation or authorization a provider of broadband Internet access service may have to address the needs of emergency communications or law enforcement, public safety, or national security authorities, consistent

with or as permitted by applicable law, or limits the provider's ability to do so. As used herein, "net neutrality" means that Vendor will not block, throttle, or prioritize internet content or applications or require that end users pay different or higher rates to access specific types of content or application. For the purposes of this Contract, the prohibition against blocking or throttling of internet content or applications does not apply to reasonable network management practices. Any Vendor awarded a new Contract or Contract renewal shall certify compliance with EO 175 as a condition precedent to award or renewal.

**5. Compliance with Consultant Disclosure Law.** For purposes of this Section 5 (Compliance with Consultant Disclosure Law), the term "**Consulting Services**" means services consisting of analysis, evaluation, research, training, data processing, computer programming, engineering, environmental, health, and mental health services, accounting, auditing, paralegal, legal, or other similar services. Pursuant to NY Finance Law Section 163(4-g) (as amended by Chapter 10 of the Laws of 2006), if the Contract involves Consulting Services, then Vendor shall timely, accurately, and properly submit an annual employment report for the Contract to the MTA, the Department of Civil Service, and the State Comptroller.

**6. Failure to Comply with State Investigation as Grounds for Cancellation of Contract.** The term "**Compliance Action**" means to: (i) testify in an investigation concerning any transaction or contract with the state, any political subdivision thereof, a public authority, or with any public department, agency, or official of the state or of any political subdivision thereof or of a public authority; (ii) sign a waiver of immunity against subsequent criminal prosecution; or (iii) answer any relevant question concerning such transaction or contract. If a person refuses to perform a Compliance Action when called to do so before a grand jury, any state department head, temporary state commission, or other state agency, law department organized crime task force, any city department head, or other city agency, which is empowered to compel the attendance of witnesses and examine them under oath, then such person (and any firm, partnership, or corporation of which she or he is a member, partner, director, or officer) shall be disqualified for a period of five (5) years after such refusal from selling to, submitting bids to, receiving awards from, or entering into any contracts with any public authority or official thereof (including the MTA and its subsidiaries and affiliates) for goods, work, or services. The Contract, and any and all contracts made with any public authority or official thereof by such person (and any firm, partnership, or corporation of which she or he is a member, partner, director, or officer) may be cancelled or terminated by the MTA without incurring any penalty or damages on account of such cancellation or termination; provided, however, that the MTA shall pay amounts due under the Contract for Work done prior to such cancellation or termination.

### **7. Diesel Emissions Reduction Act of 2006.**

**7.1. Compliance with DERA.** Vendor represents that, in connection with activities relating to the Contract, it shall comply with the 2006 Diesel Emissions Reduction Act ("**DERA**"), as codified at NY Environmental Conservation Law Section 19-0323, and its implementing regulations. In accordance with DERA, Vendor:

**7.1.1. Ultra-Low Fuel.** Shall use ultra-low sulfur diesel fuel (< 15ppm) in all heavy-duty diesel vehicles (>8500 lbs. gross vehicle weight rating ("**GVWR**")) ("**HDVs**") used at or on any MTA Property or worksite in performing Work or providing materials or equipment unless such HDVs are otherwise exempt.

**7.1.2. Vendor DERA Representation.** Represents that all of its affected vehicles will meet the DERA-required Particulate Matter ("**Particulate Matter**") and Oxides of Nitrogen (NOx) emission standards by: (i) utilizing devices that the U.S. Environmental Protection Agency ("**EPA**") or the California Air Resources Board certify as achieving reductions in Particulate Matter and NOx at the highest classification level for emission control strategies applicable to the particular engine and application; (ii) utilizing engines certified to meet the 2007 EPA standard for Particulate Matter (0.01g/bhp-hr) as set forth in 40 CFR Section 86.007-11 or any subsequent EPA standard that is at least as stringent; or (iii) employing alternative fuel vehicles that do not operate on diesel fuel ("alternative fuel" means natural gas, propane, ethanol, methanol, gasoline (when used in hybrid electric vehicles only), hydrogen, electricity, fuel cells, or advanced technologies that do not rely solely on diesel fuel or a diesel/non-diesel mixture). If Vendor has secured a waiver (including waivers based on the useful life of the vehicle) from the Best Available Retrofit Technology ("**BART**") or ultra-low sulfur diesel fuel requirements from the New York State Department of Environmental Conservation, then Vendor shall submit the waiver to the MTA with its Bid.

**7.2. DERA Annual Report.** Acknowledges that the MTA is required to submit an annual report detailing MTA and Vendor compliance with DERA. Vendor shall provide, no later than September first (1<sup>st</sup>) of each calendar year, the following information for covered vehicles performing Work on any MTA Property or worksite: (i) the total number of diesel-fuel powered motor vehicles owned or operated, and how many of those were powered by ultra-low sulfur diesel fuel; (ii) the total number of on road diesel fuel-powered motor vehicles owned or operated with a GVWR of more than 8500 lbs.; (iii) the total number of off road vehicles owned or operated; (iv) the number of such on road and off road vehicles that utilized BART, including a breakdown by BART installation date, vehicle model, VIN (if applicable), engine year, and the type and classification level of technology used for each vehicle including the CARB designated diesel emission control strategy family name, if applicable; (v) the number of such vehicles that have been replaced/repowered with an engine certified to the applicable 2007 EPA standard for Particulate Matter as set forth in 40 CFR Section 86.007-11 or to any subsequent EPA standard for Particulate Matter that is at least as stringent; (vi) the number of such vehicles that have been replaced with alternative fuel vehicles; (vii) the number of inventoried HDVs retired; (viii) identification of all ultra-low sulfur diesel waivers, findings, and renewals of such findings and, along with each such waiver, the quantity of diesel fuel needed to power diesel fuel-powered motor vehicles owned or operated, and specific information concerning the availability of ultra-low sulfur diesel fuel; (ix) identification of BART waivers

issued to Vendor; (x) the quantity of ultra-low sulfur diesel fuel used; (xi) a certification that all reported information is correct and a statement of compliance indicating the percent of inventoried HDVs meeting the applicable DERA requirements; and (xii) any other information that the New York State Department of Environmental Conservation requires.

**8. Bidder Responsibility Determinations.** The MTA may take into account information regarding Vendor's compliance with the MBE/WBE program requirements included in the Contract, including: (i) Vendor's failure to meet goals or demonstrate good faith efforts to meet same, and (ii) Vendor's willful or intentional failures, fraud, or intentional misrepresentations, as described in applicable state MBE/WBE law and regulations, in rendering determinations as to whether Vendor is found to be a responsible Bidder in any Solicitation, as required pursuant to NY Public Authorities Law Section 1209 or 1265-a, as applicable.

**9. Tax Exemption.** The MTA is a government instrumentality of New York State and, pursuant to NY Public Authorities Law Sections 1266 and 1275, as amended, is exempt from New York State and local taxes.

**10. No Confidentiality.** Vendor agrees that all information heretofore or hereafter furnished or disclosed to the MTA by Vendor in connection with the placing or filing of the Contract is furnished or disclosed as a part of the consideration for the Contract, that such information is not, unless otherwise agreed to by the MTA in writing, to be treated as confidential or proprietary as required by the Contract, and that Vendor shall assert no claims by reason of the use or disclosure of such information by the MTA or its assigns.

**11. Termination for Violations of Law.** The following constitute Default Events under the Contract: (1) the MTA determines that: (a) the certificate that Vendor files pursuant to NY Finance Law Section 139-k is intentionally false or intentionally incomplete; (b) the certificate that Vendor files pursuant to New York Tax Law Section 5-a was not timely filed, or is intentionally false or incomplete; or (c) Vendor's responses to the Vendor Responsibility Questionnaire were intentionally false or intentionally incomplete, and (2) a Vendor member, partner, director, or officer is convicted of: (a) bribery involving public servants and related offenses as defined in New York State Penal Law ("Penal Law") Article 200; (b) corrupting the government as defined in Penal Law Article 496; or (c) defrauding the government as defined in Penal Law Section 195.20.

**12. Non-Collusion.** By submitting a Bid, Bidder and each person signing on behalf of Vendor certifies, under penalty of perjury, that to the best of her or his knowledge and belief: (i) the prices quoted were arrived at independently without collusion, consultation, communication, or agreement with any other Bidder or competitor; (ii) unless otherwise required by law, Vendor did not and shall not knowingly disclose (directly or indirectly) to other Bidders or competitors prior to Bid opening the quoted prices; and (iii) Vendor has not and shall not induce any other person or firm to submit or not submit a Bid for purposes of restricting competition (collectively, the "Non-Collusion Requirements"). If Bidder cannot certify to the Non-Collusion Requirements, then it shall submit with its Bid a signed statement explaining why such certification cannot be made. A Bid shall not be considered for award, and an award shall not be made, if any of the Non-Collusion Requirements are not met. A Bidder failing to comply with the Non-Collusion Requirements shall not be considered for award unless the MTA determines that any disclosure made in violation of the Non-Collusion Requirements was not made for the purpose of restricting competition. The fact that Vendor: (a) published price lists, rates, or tariffs covering items being procured; (b) informed prospective customers of proposed or pending publication of new or revised price lists for such items; or (c) sold the same items to other customers at the same prices being quoted, does not constitute, without more, a disclosure in violation of the Non-Collusion Requirements.

**13. Recycled Materials.**

**13.1. Manufacturing and Packaging.** Subject to applicable law and Contract requirements, Vendor is encouraged (i) to use recycled, recyclable, or recovered materials in the manufacture of Goods and packaging, and (ii) to offer remanufactured Goods, both to the maximum extent practicable without jeopardizing the performance or intended end use of the Goods or packaging, unless such use is precluded due to health, welfare, or safety requirements. Where such use is not practical, suitable, or permitted by the Contract, Vendor shall deliver new Goods and packaging in accordance with the Contract requirements. Unless Bidder identifies in its Bid those Goods and packaging with recycled, recyclable, recovered, refurbished, or remanufactured content, Vendor shall be deemed to be offering new Goods and packaging.

**13.2. Reasonably Competitive.** NY Public Authorities Law Section 2878-a requires the MTA to purchase recycled products when the price for such products is reasonably competitive and the quality is adequate for the intended purpose. "Reasonably competitive" means a comparable recycled product manufactured, in whole or in part, with secondary materials with a cost premium of no greater than ten percent (10%). Printed material on recycled paper shall include a printed symbol indicating that the material is printed on recycled paper. A "recycled product" means any product that has been manufactured from secondary materials, as defined in New York Economic Development Law Section 261(1), and that meets the requirements of New York Environmental Conservation Law Section 27-0717(2).

**13.3. Federal Requirements.** Vendor shall comply with Resource Conservation and Recovery Act ("RCRA") Section 6002, as amended (42 U.S.C. 6962), including the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in 40 CFR Part 247 Subpart B. Vendor shall include these requirements in each subcontract financed in whole or in part with FTA-provided Federal assistance, modified only if necessary to identify the affected parties.

**14. Iran Divestment Act.** Vendor shall comply with the Iran Divestment Act of 2012, as codified in NY Finance Law Section 165-a. By entering into the Contract, Vendor certifies pursuant to NY Finance Law Section 165-a that it is not on the "Entities determined to be non-

Responsive bidders/offers pursuant to the New York State Iran Divestment Act of 2012" ("Prohibited Entities List") posted at: <http://www.ogs.ny.gov/about/regs/docs/ListofEntities.pdf>. Vendor further certifies that it shall not utilize any subcontractor identified on the Prohibited Entities List under the Contract. Vendor shall provide the same certification in connection with any Contract renewal or extension. Vendor agrees that any proposed assignee shall be required to certify that it is not on the Prohibited Entities List before the Contract assignment will be approved by the State. If, during the Term, the MTA receives information that a person (as defined in NY Finance Law Section 165-a) is in violation of the above-referenced certifications, then the MTA will review such information and offer the person an opportunity to respond. If the person fails to demonstrate that it has ceased its engagement in violating investment activity within ninety (90) days after the determination of such activity, then the MTA shall take such action as may be appropriate and provided for by law, rule, or contract, including imposing sanctions, seeking compliance, and recovering damages, and such failure shall be considered a Default Event. The MTA reserves the right to reject any Bid, request for assignment, renewal, or extension from a Bidder/Vendor appearing on the Prohibited Entities List prior to the award, assignment, renewal, or extension, and to pursue a responsibility review for any Bidder/Vendor that is awarded a Contract and appears on the Prohibited Entities List after Contract award.

**15. State Lobbying Law.** To the extent that the Contract is a "procurement contract" as defined in NY Finance Law Sections 139-j and 139-k (the "Lobbying Law"), by signing the Contract, Vendor certifies and affirms that all disclosures made in accordance with the Lobbying Law are complete, true, and accurate. The Lobbying Law imposes fines and penalties against persons and organizations engaging in impermissible contacts about a governmental procurement and provides for the debarment of repeat violators. The affirmation, certifications, and disclosure of prior non-responsibility determinations submitted with the Bid are incorporated into the Contract by reference. For certain Contract modifications or Change Orders, Vendor shall be required to submit new disclosure and certification forms ("Disclosure of Prior Non-responsibility Determinations" and the "Affirmation and Certification") as part of the Change Order process. Vendor shall disclose in its Bid, and immediately update the MTA in writing during the Term, all findings of non-responsibility due to intentional provision of false or incomplete information to a covered agency or authority within the past four (4) years with respect to the Lobbying Law. It shall be a Default Event if the MTA determines that Vendor's "Affirmation and Certification" and "Disclosure of Prior Non-responsibility Determinations" forms submitted with its Bid were intentionally false or intentionally incomplete.

**16. Omnibus Procurement Act.**

**16.1. Relevant Threshold.** If the Total Contract Price is equal to or greater than one million dollars (\$1,000,000) (the "Omnibus Threshold"), then Vendor shall document its efforts to encourage the participation of New York State Business Enterprises (each, an "NYSBE") as suppliers and subconsultants by showing that Vendor has: (i) solicited bids, in a timely and adequate manner, from NYSBEs, including certified MBE/WBEs; (ii) contacted the New York State Department of Economic Development to obtain NYSBE listings; (iii) placed notices for subconsultants and suppliers in newspapers, journals, or other trade publications distributed in New York State; or (iv) participated in bidder outreach conferences. Documentation of such efforts must be provided to the MTA upon its request. If Vendor determines that NYSBEs are not available to participate in the Contract as subconsultants or suppliers, then Vendor shall provide a statement to the MTA indicating the method by which such determination was made. If Vendor does not intend to use subconsultants, then Vendor shall provide a statement to the MTA verifying this.

**16.2. Compliance with the Federal Equal Opportunity Act of 1972; Offset Credits.** Vendor shall comply with the Federal Equal Opportunity Act of 1972 (P.L. 92-261), as amended. Vendor shall cooperate with any New York State effort to obtain offset credits from foreign countries as a result of the Contract.

**16.3. Notification to New York State Residents.** If the Total Contract Price meets or exceeds the Omnibus Threshold, then Vendor shall make reasonable efforts to notify New York State residents of employment opportunities by listing any such positions with the New York State Department of Labor (the "NYSDEL"), Division of Employment and Workforce Solutions, or to otherwise notify New York State residents in a manner consistent with existing collective bargaining agreements. Vendor shall document such efforts and provide said documentation to the MTA or the State, upon request.

**16.4. Availability of New York State Subconsultants and Suppliers.** Information on the availability of New York State subconsultants and suppliers is available: (i) online by going to the following address and signing up for a free account with the New York State Contract Reporter: <https://www.nyscr.ny.gov/register.cfm>; or (ii) by contacting the New York State Department of Economic Development, Division of Small Business, at 518-292-5266.

**16.5. Certified Minority and Women-Owned Business Enterprises.** A directory of New York State certified MBE/WBEs is available: (i) online at: <https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp>; (ii) by contacting the Empire State Development's Division of Minority and Women's Business Development: (a) Albany, NY 12245, (518) 292-5250, or (b) 633 Third Avenue, 33rd Floor New York, NY 10017 (212) 803-2414; or (iii) by contacting the MTA's Department of Diversity and Civil Rights at 646-252-1385 for an appointment to inspect the directory at 2 Broadway, 16th floor, New York, NY 10004. At Vendor's request, the Department of Diversity and Civil Rights will assist a firm in reviewing the directory.

**16.6. Future Contracting Opportunities.** Entities and individuals that want to be informed by email of future contracting opportunities advertised in the New York State Contract Reporter may sign up for a free account at: <https://www.nyscr.ny.gov/contracts.cfm> to receive notices.

**16.7. Registration.** Entities and individuals that want to sign up, at no charge, to be included in the New York State Business Registry, which may be used by various New York State public

agencies and by prime consultants who may contact businesses directly about opportunities, may go to <https://www.nyscr.ny.gov/register.cfm>. Requests for listing in this registry may be made by: (i) an NYSBE that is not currently listed in this registry, and (ii) a business in any other state or country, provided the state or country in which the company is located does not engage in discriminatory purchasing practices. These discriminatory jurisdictions are identified within the Business Registry application.

**16.8. Discriminatory Jurisdictions.** If Bidder's principal place of business is located in a country, nation, province, state, or political subdivision that penalizes New York State vendors, and if the proposed Work will be substantially produced or performed outside of New York State, then the Omnibus Procurement Act 1994 and 2000 amendments (Chapters 684 and 383, respectively) require that such Bidder be denied contracts that it may otherwise obtain. Contact New York State Department of Economic Development for a current list of jurisdictions subject to this Section 16.8 (Discriminatory Jurisdictions).

**17. Comptroller Approval.** Pursuant to NY Public Authorities Law Section 2879-a, the Contract may be subject to the Office of the State Comptroller's review and approval and, if such review and approval is required, then the Contract shall not be valid or binding upon the MTA unless the Office of the State Comptroller reviews and approves the Contract.

**18. Maintenance of Workers' Compensation Insurance.** Pursuant to NY Finance Law Section 142, Vendor shall secure and maintain workers' compensation and disability insurance coverage throughout the Term for the benefit of employees who are required by law to be so covered by such insurance. The Contract shall be void and of no effect unless Vendor complies with the obligations set out in this Section 18 (Maintenance of Workers' Compensation Insurance).

#### **19. Domestic Steel Content.**

**19.1. Domestic and Foreign Steel Product Applicability.** Pursuant to NY Public Authorities Law Section 2603-a, this Section 19 (Domestic Steel Content) shall apply to use of domestic and foreign steel products if the Total Contract Price exceeds fifty thousand dollars (\$50,000) or, if this Contract is for the construction, reconstruction, alteration, repair maintenance or improvement of public works and exceeds one hundred thousand dollars (\$100,000). Although Bidders are encouraged to utilize domestic steel and to submit Bids that include the use of steel products containing domestic steel components, Bidders may also submit Bids that include the use of steel products not domestically produced. Bidders shall certify the portion of the Total Contract Price that represents the cost of steel components in the Bid, broken down by the cost of domestic steel components and foreign steel components. As used herein, the term "steel component" means a product rolled, formed, shaped, drawn, extruded, forged, cast, fabricated, or otherwise similarly processed, or processed by a combination of two (2) or more operations, from steel.

**19.2. Steel Products.** Supplies, material, or equipment shall be deemed to be made of, fabricated from, or contain steel components, if the cost of such component(s) exceeds fifty percent (50%) of the cost of the material content of the supplies, materials, or equipment, and such supplies, materials, and equipment shall be referred to herein as "steel products".

**19.3. Production in the United States; Reasonable Costs.** A steel component, including structural steel and reinforcing steel, shall be deemed to have been produced or made in whole or in substantial part in the United States, its territories, or possessions if the cost of the portion thereof, including both materials and processes, produced or made in the United States, its territories, or possessions, exceeds fifty percent (50%) of the cost of the component. Such steel components shall be referred to herein as "domestic steel components". The cost of domestic steel components shall be deemed reasonable if the lowest responsible and responsive Bidder has offered all or substantially all domestic steel components.

**19.4. Responsible and Reasonable Steel Components.** If a Bid including domestic steel components is responsible and responsive, but not lowest, then a credit of six percent (6%) of the cost of the foreign steel components contained in the lowest responsible and responsive Bid shall be applied, and the Contract shall be awarded to the lowest responsible and responsive Bidder offering domestic steel components if the application of the credit to its Bid makes such Bid the lowest responsible and responsive Bid.

**19.5. Exception.** The six percent (6%) credit contemplated in 19.4 (Responsible and Reasonable Steel Components) above shall not be applied if doing so would result in selecting a Bidder with a lower amount of domestic steel components as part of its Bid than another Bidder with a higher amount of domestic steel components as part of its Bid.

**19.6. Steel Component Conclusive Presumption.** If no Bid is received that includes steel components produced or made in the United States, a conclusive presumption shall be made that such steel components are not available domestically.

**19.7. Automotive Products Trade Act.** Motor vehicles and automobile equipment assembled in Canada in conformity with the United States-Canadian trade agreement known as the "Automotive Products Trade Act of 1965" shall not be deemed of foreign origin.

#### **20. Service-Disabled Veteran Owned Businesses.**

**20.1. Participation Opportunities for New York State Certified Service-Disabled Veteran Owned Businesses.** New York State Executive Law Article 17-B provides for more meaningful participation in public procurements by certified Service-Disabled Veteran-Owned Businesses (each, an "SDVOB"), thereby further integrating such businesses into New York State's economy. The MTA recognizes the need to promote the employment of service-disabled veterans and to ensure that certified SDVOBs have opportunities for maximum feasible participation in the performance of MTA contracts. In recognition of the service and sacrifices made by Service-Disabled veterans and their economic activity in doing business in New York State, Bidders and Vendor are expected to consider SDVOB participation when fulfilling Contract requirements, including participation as subcontractors, suppliers, protégés, or in other partnering or supporting roles.

#### **20.2. SDVOB Contract Goals.**

**20.2.1. Goals Specified for the Utilization of SDVOBs.** The goal specified for SDVOB utilization is expressed as a percentage of the Total Contract Price. The SDVOB participation goal is shall be stated in the MTA Information for Bidders, which goal is based on the current availability of qualified SDVOBs. For purposes of providing meaningful SDVOB participation, Bidders and Vendor should reference the directory of New York State Certified SDVOBs (available at: [http://ogs.ny.gov/Core/docs/CertifiedNYS\\_SDVOB.pdf](http://ogs.ny.gov/Core/docs/CertifiedNYS_SDVOB.pdf)). Questions regarding compliance with SDVOB participation goals should be directed pre-award to the MTA Designated Point of Contact, and post-award to the Project Manager. Vendor is encouraged to contact the Office of General Services Division of Service-Disabled Veterans Business Development at 518-474-2015 or [VeteransDevelopment@ogs.ny.gov](mailto:VeteransDevelopment@ogs.ny.gov) to discuss additional methods of maximizing SDVOB participation.

**20.3. SDVOB Utilization Plan.** As further set out in this Section 20.3 (SDVOB Utilization Plan), Bidders and Vendor shall document its good faith efforts to provide meaningful participation by SDVOBs in connection with the Contract.

**20.3.1. SDVOB Utilization Plan Submission.** Pursuant to 9 NYCRR 252.2(i), the apparent low Bidder shall, by close of business on the seventh (7<sup>th</sup>) calendar day after the public Bid opening date, submit to the MTA a completed SDVOB Utilization Plan on Form SDVOB 100. Bidders are required to submit a completed SDVOB Utilization Plan on Form SDVOB 100 with their Bid.

**20.3.2. Description of SDVOB Work.** The SDVOB Utilization Plan shall include: (i) a list of the SDVOBs that Bidder intends to use in connection with the Contract; (ii) a description of the Work that Bidder intends the SDVOB to perform to meet the utilization goals; and (iii) the estimated dollar amounts to be paid to an SDVOB or, if not known, an estimate of the percentage of Work the SDVOB will perform. By signing the Utilization Plan, Bidders acknowledge that making false representations or providing information that shows a lack of good faith as part of, or in conjunction with, submitting a SDVOB Utilization Plan is prohibited by law, constitutes a Default Event, and may result in penalties including loss of eligibility to participate in future Solicitations and the withholding of payments. Any modifications or changes to the agreed SDVOB participation after Contract award and during the Term must be reported on a revised SDVOB Utilization Plan and submitted to the MTA Department of Diversity and Civil Rights ("DDCR").

**20.3.3. DDCR Review; Notice of Deficiency.** The DDCR will review the submitted SDVOB Utilization Plan and notify Bidder/Vendor of acceptance or issue a notice of deficiency within twenty (20) calendar days of DDCR's receipt. If a notice of deficiency is issued, then Bidder/Vendor shall submit to DDCR a written remedy in response to the notice of deficiency within seven (7) business days of receipt thereof. If the written remedy is not timely submitted or found by DDCR to be inadequate, then DDCR shall notify Bidder/Vendor and direct Bidder/Vendor to submit, within five (5) business days of notification by DDCR, a request for a partial or total waiver of SDVOB participation goals on Form SDVOB 200. Failure to file the waiver form in a timely manner may be grounds for disqualification of the Bid.

**20.3.4. Disqualification of Bidder.** The MTA may disqualify a Bidder as non-responsible if: (i) Bidder fails to submit an SDVOB Utilization Plan; (ii) Bidder fails to submit a written remedy to a notice of deficiency; (iii) Bidder fails to submit a waiver request; or (iv) DDCR determines that Bidder has failed to document good faith efforts.

**20.3.5. Vendor SDVOB Certification.** If awarded the Contract, Vendor certifies that it shall follow the submitted SDVOB Utilization Plan.

**20.3.6. SDVOB Material Breach.** Vendor's failure to use SDVOBs as agreed in the Utilization Plan shall constitute a Default Event and, upon the occurrence of such non-use, the MTA shall be entitled to any remedy available, including a finding of Vendor non-responsibility.

#### **20.4. Request for Waiver.**

**20.4.1. Partial or Total Waiver.** Prior to submission of a request for a partial or total waiver, Bidder/Vendor shall speak pre-award to the designated MTA procurement representative and post-award to the Project Manager for guidance.

**20.4.2. Required Documentation for Request.** Pursuant to 9 NYCRR 252.2(m), if Bidder/Vendor is able to document good faith efforts to meet the goal requirements set forth in Section 20.4.4 (SDVOB Utilization Plan and Monthly SDVOB Vendor Compliance Report), then Bidder/Vendor may submit a request for a partial or total waiver on Form SDVOB 200, accompanied by supporting documentation. Bidder/Vendor may submit the waiver request at the same time that it submits its SDVOB Utilization Plan. If a waiver request is submitted with the SDVOB Utilization Plan and it is not accepted by DDCR at that time, then the provisions of Sections 20.5 (Required Good Faith Efforts), 20.6 (Monthly SDVOB Vendor Compliance Report), and 20.7 (Breach of Contract and Damages) shall apply. If the documentation included with Bidder's/Vendor's waiver request is complete, then DDCR shall evaluate the request and issue a written notice of acceptance or denial within twenty (20) calendar days of DDCR's receipt.

**20.4.3. Subsequent Request for Waiver.** Throughout the Term, Vendor shall attempt to utilize, in good faith, SDVOBs identified in its SDVOB Utilization Plan. Requests for a partial/total waiver of established goal requirements made subsequent to Contract award may be made during the Term to DDCR, but must be made prior to the submission of a request for final payment on the Contract.

**20.4.4. SDVOB Utilization Plan and Monthly SDVOB Vendor Compliance Report.** If DDCR, upon review of the SDVOB Utilization Plan and Monthly SDVOB Vendor Compliance Report Form SDVOB 101 determines that Vendor is failing or refusing to comply with the SDVOB utilization goals and no waiver has been issued for such non-compliance, then DDCR may issue a notice of deficiency to Vendor. Vendor must respond to the notice of deficiency within seven (7) business days of Vendor's receipt of the same. Such response may include



a request for partial or total waiver of the SDVOB utilization goals. Waiver requests should be sent to DDCR.

**20.5. Required Good Faith Efforts.** Pursuant to 9 NYCRR 252.2(n), Vendor shall document its good faith efforts toward utilizing SDVOBs on the Contract. Evidence of required good faith efforts shall include: (i) copies of solicitations to SDVOBs and any responses thereto; (ii) explanations of the specific reasons each SDVOB that responded to Vendor's solicitation was not selected; (iii) dates of any pre-bid, pre-proposal, pre-award, or other meetings attended by Vendor, if any, scheduled by DDCR or the MTA with certified SDVOBs whom DDCR or the MTA determined were capable of fulfilling the SDVOB goals; (iv) information describing the specific steps undertaken to reasonably structure the Contract scope of work for the purpose of subcontracting with, or obtaining supplies from, certified SDVOBs; and (v) other information deemed relevant to the waiver request.

**20.6. Monthly SDVOB Vendor Compliance Report.** Pursuant to 9 NYCRR 252.2(q), Vendor shall submit monthly SDVOB Vendor Compliance reports (using Form SDVOB 101, Monthly Compliance Report) to DDCR throughout the Term by the tenth (10<sup>th</sup>) day of each month, with each such report detailing the preceding month's activity and documenting progress made towards achieving the SDVOB utilization goals. The Form SDVOB 101 should be emailed to DDCR at: [DDCRMonthlyParticipationReports@nyc.gov](mailto:DDCRMonthlyParticipationReports@nyc.gov), and the email subject line should include the Contract number for which the Form SDVOB 101 is being submitted.

**20.7. Breach of Contract and Damages.** Pursuant to 9 NYCRR 252.2(s), the MTA's determination that Vendor has willfully and intentionally failed to comply with the SDVOB participation goals shall constitute a Default Event.

**20.8. SDVOB Reporting Forms.** When applicable, the Contract contains the following forms: (i) Form SDVOB 100 (SDVOB Utilization Plan Form); (ii) Form SDVOB 200 (Application For Waiver); and (iii) Form SDVOB 101 (Monthly SDVOB Participation Report).

**21. Prompt Payment.** In addition to the prompt payment provisions included in the Terms and Conditions, this Section 21 (Prompt Payment) includes various details regarding payments made pursuant to the Contract.

**21.1. Prompt Payment to DBE Subcontractors.** Vendor shall pay all DBE subcontractors, including retainage, for satisfactory performance of their contracts no later than thirty (30) days from receipt of each payment by the MTA (including any retainage) in accordance with U.S. Department of Transportation regulations, "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs," 49 CFR Part 26. Pursuant to 49 CFR 26.29(c), work is "satisfactorily" completed when (i) all the tasks called for in the subcontract have been accomplished and documented as required by the MTA, or (ii) the MTA has made an incremental acceptance of a portion of the Work that covers the subcontractor's work. Vendor may only delay or postpone payment to a DBE subcontractor for good cause and with the MTA's prior written approval. Vendor shall include in any subcontract with a DBE subcontractor language providing that Vendor and the DBE subcontractor shall use appropriate alternative dispute resolution mechanisms to resolve payment disputes. The MTA shall not reimburse Vendor for any part of the Work performed by DBE subcontractors unless and until Vendor ensures that the DBE subcontractors are promptly paid for any work that they have performed. Vendor's failure to comply with this Section 21.1 (Prompt Payment to DBE Subcontractors) shall constitute a Default Event.

**21.2. Prompt Payment to Subcontractors and Retainage.** If the Contract constitutes a public work contract, then Vendor shall (i) pay all subcontractors, including each MBE/WBE subcontractor under the Contract, for the work performed under its subcontract no later than seven (7) calendar days from the receipt of any payment that Vendor receives from the MTA for Work performed by the subcontractor, and (ii) pay interest at the rate required by law if payment is not made within the required seven (7) calendar days. If the Contract is not a public work contract, then Vendor shall pay all subcontractors under the Contract for the satisfactory performance of their subcontracts no later than thirty (30) days from the receipt of each payment that Vendor receives from the MTA for Work performed by the subcontractor. If the Contract includes retainage, then Vendor shall not retain more than the lesser of five percent (5%) and the retainage percentage provided in the Contract between the MTA and Vendor, except that Vendor may retain not more than ten percent (10%) of each payment to the subcontractor where, prior to entering into a subcontract with Vendor, Vendor requested that the subcontractor provide a performance bond and a payment bond for subcontractors, labor, or material suppliers, each in the full amount of the subcontract and the subcontractor was unable or unwilling to provide such bonds. Vendor shall return retainage to any subcontractors within thirty (30) days of receiving a payment from the MTA that returns Vendor's retainage for Work that the subcontractor satisfactorily performed.

**21.3. Prompt Payment Flow Down.** Vendor shall insert into every first-tier subcontract with its subcontractors provisions requiring the subcontractor to comply with the requirements of NY Public Authorities Law Section 1269-g, and to require compliance by its lower-tier subcontractors and to file with Vendor a certification of compliance, under penalty of perjury, within ninety (90) days of the effective date of each such subcontract.

**22. Prohibition on Purchases of Tropical Hardwoods.** By submitting a Bid, Vendor certifies and warrants that all wood products to be used under the Contract shall be in accordance with NY Finance Law Section 165, which prohibits the purchase and use of tropical hardwoods by the MTA, unless specifically exempted, specified in the Contract, or Vendor has received written permission from the MTA. Vendor shall be responsible for obtaining any exemptions. If any Work involves the use of woods, whether supply or installation, to be performed by a subcontractor, then Vendor shall indicate and certify in its Bid that the subcontractor has been informed of and is in compliance with requirements regarding use of tropical hardwoods as detailed in NY Finance Law Section 165. Bidders shall include in their Bids proof of qualification for any exemptions to the requirements in Section 165, which are subject to MTA approval, and failure

to provide such proof may be cause for a nonresponsive determination.

**23. Assignment of Claims.** Vendor hereby assigns to the MTA all right, title, and interest in and to all claims and causes of action arising under applicable federal and state antitrust laws relating to Work purchased or procured pursuant to the Contract.

**24. International Boycott Prohibition; Compliance with Administrative Code.** Pursuant to NY Labor Law Section 220-f and NY Finance Law Section 139-h, if the Contract exceeds \$5,000, then Vendor agrees, as a material condition of the Contract, that neither it nor any of its substantially owned or affiliated persons, firms, partnerships, or corporations has participated, is participating, or shall participate in an international boycott in violation of the federal Export Administration Act of 1979 (50 USC App. Sections 2401 et seq.) or the United States Department of Commerce's regulations promulgated thereunder. If the United States Department of Commerce or other United States agency issues a final determination after the Effective Date that Vendor, or any of the aforesaid affiliates, is convicted or is otherwise found to have violated said laws or regulations or otherwise participated in an international boycott, then the Contract shall be rendered forfeit and void. Pursuant to 2 NYCRR 105.4, Vendor shall so notify the State Comptroller within five (5) business days of any such conviction, determination, or disposition of appeal. Vendor further agrees to comply with New York City Administrative Code Section 6-114 and the Comptroller-issued rules thereunder.

**25. Energy Conservation.** Vendor shall comply with mandatory energy efficiency standards and policies contained in 42 USC §6321 et seq. and New York State Energy Law Article 11. Vendor shall ensure that all Work, including Work performed by a subconsultant, complies with the requirements in this Section 25 (Energy Conservation). Vendor shall further comply with Executive Orders 111 and 142, which require the MTA to:

**25.1. Energy Efficiency.** With respect to energy efficiency: (i) implement energy efficiency practices and meet the ENERGY STAR® building criteria for energy performance and indoor environmental quality in its existing buildings to the maximum extent possible; (ii) in the design, construction, operation, and maintenance of new MTA buildings, to the maximum extent practicable, follow guidelines for construction of "Green Buildings", including guidelines set forth in the Tax Law §19, which created the Green Buildings Tax Credit, and the U.S. Green Buildings Council's LEED™ rating system; (iii) in the construction of new MTA buildings, achieve a twenty percent (20%) improvement in energy efficiency performance relative to levels required by New York State's Energy Conservation Construction Code, as amended; and (iv) in the substantial renovation of existing MTA buildings, incorporate energy-efficiency criteria consistent with ENERGY STAR® and any other energy efficiency levels as may be designated by New York State Energy Research and Development Authority into all specifications developed for new construction and renovation.

**25.2. ENERGY STAR® Energy-Efficient Products; E85 Ethanol and Bio-Diesel.** With respect to new products and replacing existing MTA equipment, select ENERGY STAR® energy-efficient products. With respect to fuel, purchase, allocation, distribution, and use E85 ethanol and bio-diesel if feasible.

**25.3. Energy Generation; Alternative-Fuel Vehicles.** With respect to purchasing energy, increase the MTA's purchase of energy generated from wind, solar, thermal, photovoltaics, sustainably managed biomass, tidal, geothermal, methane waste, and fuels cells. With respect to MTA vehicles, procure increasing percentages of alternative-fuel vehicles and implement strategies to reduce petroleum consumption and emissions by using alternative fuels and improving vehicle fleet fuel efficiency.

**26. Compliance with NY Public Authorities Law Section 1269-g.** The following shall apply to Vendor and any subcontractors if the Contract is a public works contract involving the employment of laborers, workmen, or mechanics.

**26.1. Applicable Rules and Regulations.** Vendor shall comply with NY Public Authorities Law Section 1269-g, as amended and supplemented, and with all rules and regulations that the MTA adopts pursuant to such law.

**26.2. Posting and Distributing Required Information.** No later than ninety (90) days from the Effective Date, Vendor shall file with the MTA a certification signed by an officer of Vendor, and sworn to under penalties of perjury, that Vendor has complied with Section 1269-g by posting and distributing the information specified in Section 1269-g(2) in the manner required by Section 1269-g(1). Such certification shall include a copy of the information that Vendor posted and distributed and a description of how it has been posted and distributed.

**26.3. Responsibility to Communicate Required Information.** Once the MTA has posted on its public websites (currently [www.mta.info](http://www.mta.info)) sample statements, displays, and other materials that provide the information required by Section 1269-g, Vendor may use such sample statements, displays, and other materials in complying with Section 1269-g. Until the MTA has posted such information, Vendor shall accurately and completely prepare and communicate the required information, including: (i) the telephone numbers and addresses to report fraud or other illegal activity to the appropriate officers of the MTA inspector general and the New York Attorney General; (ii) a detailed description of conduct prohibited by NY Finance Law Section 189, and the role of that act in preventing and detecting fraud and abuse in Work paid for by the MTA or with funds originating from the MTA; (iii) a notice to prospective *qui tam* plaintiffs on how to file a *qui tam* action, including the necessity to contact private counsel skilled in filing such actions and of the potential for cash rewards in such actions based on the percentage of the funds recovered by the government; and (iv) a description of the prohibitions on employer retaliation against persons who file or assist actions under Article 13 of NY Finance Law (the New York False Claims Act) pursuant to Section 191 therein, or who report illegal conduct that threatens the health or safety of the public pursuant to NY Labor Law Section 740.

**26.4. Subcontracting Requirements.** Vendor shall include in every first-tier subcontract, and require the inclusion in all lower-tier subcontracts, a provision requiring (i) each

subcontractor to comply with the requirements of NY Public Authorities Law Section 1269-g, as amended and supplemented, and with any statements, displays, and other materials, and rules and regulations that the MTA adopts pursuant to Section 1269-g(6), and (ii) that, no later than ninety (90) days from the effective date of each subcontract, each subcontractor file with Vendor a verified statement (a) certifying that such subcontractor has complied with Section 1269-g by posting and distributing the information specified in Section 1269-g(2) in the manner required by Section 1269-g(1), and (b) that includes a copy of the information that such subcontractor posted and distributed.

**26.5. Compliance Certification.** Vendor shall file with the MTA, no later than ninety (90) days from the effective date of each subcontract of any tier, a certification that (i) is signed by an officer of subcontractor and sworn to under penalties of perjury certifying that such subcontractor has complied with Section 1269-g by posting and distributing the information specified in Section 1269-g(2) in the manner required by Section 1269-g(1), and (ii) includes a copy of the information that Vendor posted and distributed and a description of how that information has been posted and distributed.

**26.6. Flow Down of NY Public Authorities Law Section 1269-g.** Any payment to Vendor under the Contract is conditioned upon Vendor's material compliance with this Section 26 (Compliance with NY Public Authorities Law Section 1269-g). Vendor shall insert into every first-tier subcontract, and require insertion into all lower-tier subcontracts, a provision stating that any payments made pursuant to the subcontract are conditioned upon subcontractor's material compliance with Section 1269-g. Vendor shall submit with each request for payment a certification signed by an officer of Vendor and sworn to under penalties of perjury certifying that Vendor and every subcontractor has continued to comply with Section 1269-g, as amended and supplemented, and with any statements, displays, and other materials, and rules and regulations that the MTA adopts pursuant to Section 1269-g(6).

## **27. Wage and Hour Provisions.**

**27.1. Submission of Certified Payroll Transcripts for Public Works Contracts.** Pursuant to NY Labor Law Article 8, Vendor and subcontractors on public works projects shall submit monthly payroll transcripts to the MTA. Upon mutual agreement of Vendor and the MTA, the submission may be in a specified format provided that: (i) Vendor/subcontractor retains the original records, and (ii) an original signed letter by a duly authorized individual of Vendor/subcontractor attesting to the truth and accuracy of the records accompanies the agreed-upon format. For the avoidance of doubt, this Section 27.1 (Submission of Certified Payroll Transcripts for Public Works Contracts) does not apply to NY Labor Law Article 9 pertaining to building services contracts.

**27.2. Posting; Payroll Records.** Vendor shall publicly post on the worksite, in a prominent and accessible place, a legible schedule of the prevailing wage rates and supplements. Vendor shall also post Public Work Project posters regarding prevailing wages, which may be obtained from the NYSDOL. Vendor and its subcontractors shall notify all laborers, workers, and mechanics engaged in the Work in writing of the prevailing wage rate for their job classification on every pay stub for such workers. At the beginning of the Work and with the first paycheck after July 1 of each year, Vendor and subcontractors shall provide all laborers, workers, and mechanics with written notice of: (i) the telephone number and address of the NYSDOL in the NYSDOL-required format, and (ii) a worker's right to contact the NYSDOL if such worker is not receiving the proper wage rate supplement. Failure to comply with the NYSDOL requirements shall result in penalties as determined by the NYSDOL. Pursuant to NY Labor Law Articles 8 and 9, Vendors and subcontractors shall keep original payrolls or transcripts subscribed and affirmed as true under the penalties of perjury as required by law. For public works contracts over twenty-five thousand dollars (\$25,000) where Vendor or subcontractor maintains no regular place of business in New York State, then such records shall be kept at the worksite while Work is being performed. For building services contracts, such records must be kept at the worksite while Work is being performed. Vendor employees and subcontractors who work in excess of eight (8) hours in a day or forty (40) hours in a week shall be paid at the overtime rate identified by the NYSDOL.

**27.3. Contract Work Hours and Safety Standards Act.** If the Contract involves the employment of laborers or mechanics, then the requirements of the following shall apply: 40 U.S.C. 3701 et seq., specifically, the wage and hour requirements of 40 U.S.C. 3702; the implementing regulations at 29 CFR Part 5; the safety requirements of Section 107 of the Contract Work Hours and Safety Standards Act at 40 U.S.C. 3704; the implementing regulations at 29 CFR Part 1926; and the implementing regulations at 29 CFR Part 5, including the clauses contained in 29 CFR 5(b) and Sections 27.4 (Overtime Requirements), 27.5 (Violation; Liability for Unpaid Wages; Liquidated Damages), 27.6 (Withholding for Unpaid Wages and Liquidated Damages), and 27.7 (Subcontracts). Vendor or subcontractor shall maintain payrolls and basic payroll records for all laborers and mechanics (including guards and watchmen) working under the Contract throughout the Term and for three (3) years from the completion thereof or for as long as any records are required to be kept pursuant to the Contract. Such records shall contain each employee's: (i) name and address; (ii) Social Security number; (iii) correct classifications; (iv) hourly wages paid; (v) daily and weekly number of hours worked; (vi) deductions made; and (vii) actual wages paid. Such records shall be made available by Vendor or subcontractor for inspection, copying, or transcription by authorized representatives of the MTA, FTA, the U.S. Department of Transportation ("DOT"), or the Department of Labor, and Vendor or subcontractor shall permit such representatives to interview employees during working hours on the job.

**27.4. Overtime Requirements.** Vendor and subcontractors shall not require or permit a laborer or mechanic to work in excess of forty (40) hours in any work week unless such laborer or mechanic is compensated at a rate not less than one and one-half (1.5) times the basic pay rate for all hours worked in excess of forty (40) hours in such work week, if employed for such

Work.

**27.5. Violation; Liability for Unpaid Wages; Liquidated Damages.** If a violation of 29 CFR 5.5(b)(1) occurs, then Vendor and any subcontractor shall be liable for the unpaid wages. In addition, such Vendor and/or subcontractor shall be liable to the United States (in the case of Work for the District of Columbia or a territory, to such district or to such territory) for liquidated damages, which shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of 29 CFR 5.5(b)(1) in the sum of ten dollars (\$10) for each calendar day on which such individual was required or permitted to work in excess of the standard work week of forty (40) hours without payment of the overtime wages required by 29 CFR 5.5(b)(1).

**27.6. Withholding for Unpaid Wages and Liquidated Damages.** The FTA or the recipient shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of Work performed by Vendor or subcontractor under the Contract or any other federal contract with the same Vendor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by Vendor, such sums as may be determined to be necessary to satisfy any liabilities of such Vendor or subcontractor for unpaid wages and liquidated damages as provided in 29 CFR Part 5 (Davis-Bacon Related Acts Provisions and Procedures, Section 5.8).

**27.7. Subcontracts.** Vendor or any subcontractor shall insert in any subcontracts the clauses set forth in Sections: (i) 27.4 (Overtime Requirements); (ii) 27.5 (Violation; Liability for Unpaid Wages; Liquidated Damages); (iii) 27.6 (Withholding for Unpaid Wages and Liquidated Damages); and (iv) 27.7 (Subcontracts) and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. Vendor shall be responsible for compliance by any subcontractor or lower tier subcontractor with this Section 27.7 (Subcontracts).

**28. Ethics Compliance.** Vendor and its employees shall comply with the requirements of New York Public Officers Law Sections 73 and 74, and other State codes, rules, regulations, and executive orders establishing ethical standards for the conduct of business with New York State. By submitting a Bid, Bidder certifies full compliance with such requirements in any present or future dealings, transactions, sales, contracts, services, offers, relationships, etc., involving New York State and its employees. Violation of this Section 28 (Ethics Compliance) may result in disqualification from a Solicitation, criminal and civil proceedings, and shall otherwise constitute a Default Event.

**29. Emergency Contracts.** If either (i) a disaster emergency is declared by Executive Order pursuant to Article 2-B of New York Executive Law Section 28, or (ii) a determination is made pursuant to NY Finance Law Section 163(10)(b) that an emergency exists requiring prompt and immediate delivery of Work, then the MTA shall have the right, in its sole discretion, to address the needs of such emergency, and to obtain Work from any source, including the Vendor. Vendor shall not be entitled to any claim or lost profits for Work procured from sources other than the Contract pursuant to this Section 29 (Emergency Contracts). The applicable procurement record shall include an explanation of the nature of any emergency identified pursuant to this Section 29 (Emergency Contracts).

**30. Quality Provisions Program.** Prior to Contract award, the MTA has the right: (i) to inspect facilities and evaluate Bidder's capability to provide the specified Work in the required quality, and (ii) to use the result of such evaluation in determining whether to accept or reject a Bid. Vendor shall have in effect a written quality system program that: (a) defines those actions, procedures, and requirements necessary to ensure that all aspects of the Work conform to the Contract requirements; (b) conforms with International ISO 9000 Series quality standards, or the technical equivalent national ANSI/ASQC Q90 Series; and (c) demonstrates Vendor's capability to control the processes that determine the acceptability of the Work supplied. Vendor shall address each quality system element to show the control it shall use to progress the Work according to the Contract.

**31. Minority and Women-Owned Business Enterprises.** New York Executive Law Article 15-A authorized the creation of the Division of Minority and Women's Business Development to promote state contract employment and business opportunities for minorities and women. Vendor's willful and intentional failure to comply with the minority and women-owned participation requirements of Article 15-A as set forth in the Contract shall constitute a Default Event, and Vendor shall be liable to the MTA for liquidated or other appropriate damages due to such failure and the MTA shall be entitled to all remedies at law or in equity and as may otherwise be provided for in the Contract.

**32. Cleaning Products.** Pursuant to Executive Order 134 (Directing State Agencies to Reduce the Environmental Impact of Cleaning of State Facilities), if the Work involves the use or sale of cleaning products, then Vendor shall procure and use cleaning products with properties that minimize potential impacts to human health and the environment consistent with maintenance of effectiveness of these products for the protection of public health and safety.

**33. Compliance with New York State Executive Order No. 4.** Pursuant to Executive Order No. 4 titled "Establishing a State Green Procurement and Agency Sustainability Program" ("EO 4"), all copy paper, janitorial paper, and other paper supplies purchased by the MTA shall be composed of one hundred percent (100%) post-consumer recycled content to the maximum extent practicable, and all copy paper and janitorial paper shall be processed chlorine-free to the extent practicable, unless such products do not meet the required form, function, or utility included in the Contract or the cost of the product is not competitive.

**33.1. 100% Post-Consumer Recycled Paper; Renewable Resources.** All paper products shall be composed of one hundred percent (100%) post-consumer recycled paper that is processed chlorine free or elemental chlorine free. Where such post-consumer recycled paper is not available, Bidder shall include in its Bid the highest available post-consumer recycled

content that is processed chlorine free or elemental chlorine free: e.g. 50% or 30% post-consumer recycled content chlorine free or elemental chlorine free. If post-consumer recycled chlorine free or elemental chlorine free paper product is unavailable, then virgin paper shall be from a sustainably-managed renewable resource. Product composition certifications shall be noted and presented with the Bid, and such certifications may include Green Seal, EcoLogo, environmental choice, and the chlorine free products association. All non-recycled or virgin content of proposed products shall be derived from a sustainably managed renewable resource and must be certified as such through an appropriate third party certification program recognized by the paper industry, such as the Forest Stewardship Council (FSC) and Sustainable Forestry Initiative (SFI). Confirmation of compliance with the requirements set out in this Section 33.1 (100% Post-Consumer Recycled Paper; Renewable Resources) shall be attached to and submitted with Bids, and the failure to submit the required documentation may result in the rejection of the Bid.

**33.2. Paper Packaging.** Paper packaging must show recycled content, and bear the recycle logo or note paper source from a sustainably-managed renewable resource. Bidder shall not change the percent of post-consumer recycled content of the paper specified in its Bid pre- or post-award.

**33.3. Printed Materials.**

**33.3.1. Letterhead, Forms, Memo Pads, and Envelopes.** Letterhead, forms, memo pads, and envelopes must meet the paper product requirements set out in Section 33.1 (100% Post-Consumer Recycled Paper; Renewable Resources). Materials printed on recycled stock must include a printed statement or symbol on the printed material indicating that the document is printed on recycled stock. The recycle symbol or statement is to be positioned on the back of all recycled envelopes.

**33.4. Publications.**

**33.4.1. Compliance; Recycled Paper Notification.** Publications must meet the paper product requirements set out in Section 33.1 (100% Post-Consumer Recycled Paper; Renewable Resources). Recycled paper logo or the words "Printed on recycled paper" must be printed on all publications using recycled paper. Publications must be double-sided unless otherwise noted. Vendor shall report to the MTA on applicable invoice(s) the amount of paper used by weight or volume of paper product if the Contract involves printing. Water-based or bio-based ink (vegetable based) must be used in the printing of all publications unless unavailable. Use of water-based developers, adhesives, cleaning systems, coatings, varnishes, low volatile organic compounds ("VOCs"), and less hazardous press materials is required unless otherwise unavailable.

**33.4.2. Minimum Standards of Performance.** Consideration will be given to Bidders who demonstrate the following environmental standards of performance: (i) maximized use of digital on-demand printing, direct to plate prepress systems and automatic blanket washers; (ii) maximized in-process recycling of press cleaning solvents, fixer, ink, developer, and rinse water; (iii) maximized silver recovery; (iv) maximized recycling of paper, ink, film, and other materials; (v) produced printed materials that are recycle friendly e.g., glueless binding, uncoated paper, avoiding heavy ink coverage, and dark or fluorescent papers; and (vi) avoidance of use of heavy metals, toluene, benzene, formaldehyde, alcohol, chlorinated solvents, and other hazardous materials.

**33.5. Ink.** All lithographic inks used in the production of MTA printing requirements shall be water-based or vegetable based, which will reduce the amount of VOCs released into the environment. Ink should meet or exceed the EcoLogo Certification Criteria Document for Printing Inks (CCD-040). In accordance with Article 2, section 7-a of the New York State Printing and Public Documents law, vegetable based ink must contain the following minimum percentages of vegetable oil as follows: (i) News Inks - 40%; (ii) Sheet Fed Inks - 20%; (iii) Forms Inks - 20%; and (iv) Heat Set Inks - 10%.

**34. Certain Representations and Warranties regarding Ethics.**

**34.1. Specific Representations and Warranties.** In addition to all other representations and warranties included in the Contract, Bidder and Vendor represent, warrant, and covenant as follows:

**34.1.1. No Inducement.** No payment, gift, or thing of value has been made, given, or promised in order to be awarded the Contract or any other agreement with the MTA. A breach of this Section 34.1.1 (No Inducement) shall constitute a Default Event, and the MTA shall otherwise have the right to annul the Contract without liability, and to recover all monies paid to Vendor. Vendor expressly waives all claims for, and entitlements to recover, any sums due under the Contract if the MTA exercises its rights set out in this Section 34.1.1 (No Inducement).

**34.1.2. Conflicts of Interest.** No officer, director, employee, agent, or other contractor of the MTA (and its subsidiaries and affiliates), or their immediate family or household members, has directly or indirectly received or been promised any form of benefit, payment, or compensation, whether tangible or intangible, in connection with the Contract award.

**34.1.3. Undisclosed Conflicts.** There are no undisclosed persons or entities interested with Vendor in the Contract. The Contract is entered into by Vendor without any connection with any other entity or person submitting a Bid, and without collusion, fraud, or conflict of interest. No elected or appointed officer or official, director, employee, agent, or other contractor of the MTA (and its subsidiaries and affiliates), or of the City or State of New York (including elected and appointed members of the legislative and executive branches of government), or their immediate family or household members: (i) is interested on behalf of or through Vendor directly or indirectly in any manner whatsoever in the execution or the performance of the Contract, the Work, or any portion of the revenues thereof, or (ii) is an employee, agent, advisor, or consultant to Vendor or, to the best of Vendor's knowledge, any subcontractor or supplier to Vendor. The MTA, in its sole discretion, may consent in writing to waive this Section 34.1.3 (Undisclosed Conflicts) with respect to an individual or entity if Vendor provides the MTA with a written request for such waiver, in

advance, which identifies all of the individuals and entities involved and sets forth in detail the nature of the relationship and why it would not constitute a conflict of interest.

**34.1.4. Faithful Performance.** Neither Vendor nor any of its officers, directors, employees, agents, parents, subsidiaries, or affiliates have an interest that is in conflict with Vendor's faithful performance of its obligations under the Contract. The MTA, in its sole discretion, may consent in writing to such a relationship; provided, however, that Vendor provides the MTA with advanced written notice that identifies all the individuals and entities involved and sets forth in detail the nature of the relationship and why it is in the MTA's best interest to consent to such relationship.

**34.1.5. New York City Charter Compliance; Conflicts of Interest Board.** Pursuant to New York City Charter ("City Charter") Section 2604 and other related sections, the New York City Administrative Code, and the New York State Penal Law, no elected City official or other officer or employee, nor any person whose salary is payable, in whole or in part, from the City Treasury, shall participate in any decision relating to the Contract that affects his or her personal interest or the interest of any corporation, partnership, or other entity in which he or she is, directly or indirectly, interested; nor shall any such official, officer, employee, or person have any interest in, or in the proceeds of, the Contract. This Section 34.1.5 (New York City Charter Compliance) shall not prevent Bidder's directors, officers, members, partners, or employees from participating in decisions relating to the Contract where their sole personal interest is in Bidder. Bidder and Vendor shall not employ a person, or permit a person to serve as a member of the Conflicts of Interest Board (as defined in City Charter Chapter 68) or as an officer of Bidder, if such employment or service would violate Chapter 68.

**34.1.6. Limitations on Employment.** Pursuant to New York Public Officers Law Section 73(8), no MTA employee during their employment or for two (2) years thereafter shall have any interest, direct or indirect, in the Contract or the proceeds thereof. Vendor shall not employ or permit any individual to work on the Contract or receive compensation therefrom: (i) for a period of two (2) years after her/his employment has terminated with the MTA (including its affiliates and subsidiaries); and (ii) who, at any time while employed with the MTA (including its affiliates and subsidiaries), was directly concerned with the subject matter of the Contract, personally participated in the Contract, or had the subject matter of the Contract under her or his active consideration. The MTA reserves the right to require Vendor to remove any individual impermissibly employed by Vendor in connection with the Work, and Vendor shall promptly remove any such individual upon the MTA's request.

**34.2. Supplemental Applicability; Ongoing Disclosure Obligation.** The obligations included in Section 34.1 (Specific Representations and Warranties) are supplemental to, and not in lieu of, all applicable laws concerning conflicts of interest and professional standards. If there is a difference among the standards applicable under the Contract and those provided by statute or professional standard, then the stricter standard shall apply. If Vendor has no prior knowledge of a conflict of interest contemplated herein, and acquires information that may indicate an actual or apparent conflict of interest or other failure to comply with applicable requirements, then Vendor shall promptly bring such information to the attention of the Contract Manager. Vendor shall thereafter cooperate with the MTA's review and investigation of such information, and comply with the instructions Vendor receives from the MTA in regard to remedying the situation.

**35. HIPAA Compliance.** Vendor, its agents, employees, and subcontractors shall ensure that any reproduction or copying of any plans, drawings, specifications, surveys, maps, reports, studies, records, or other documentation related to the Work or the MTA shall only be made on Health Insurance Portability and Accountability Act ("HIPAA") compliant photocopiers or multifunctional printer/copier/scanner/fax machines. Vendor shall otherwise fully comply with HIPAA.

**36. Employment Eligibility Verification.** Vendor shall comply in all respects with the Immigration Reform and Control Act of 1986, as amended ("IRCA"), with respect to all persons performing Work on its behalf, including employees and agents of Vendor and any subcontractor. Specifically, for each such employee/agent, including U.S. citizens, Vendor shall complete and retain, and cause any subcontractor to complete and retain, an Employment Eligibility Verification Form (Form I-9), in accordance with applicable laws and regulations. Vendor assumes all liability, including the defense thereof, that may result from a claim or finding that Vendor or any subcontractor violated the IRCA with respect to any person performing Work on its behalf.

**37. Antidumping.** Vendor shall indemnify and hold harmless the MTA from any dumping duty, loss, or expense, including reasonable attorney fees, that the MTA may incur arising from any claim or demand alleging that the sale of the apparatus covered by the Contract at the price therefor violates the antidumping provisions of any applicable laws.

**38. Clayton Act Compliance.** The Contract is subject to all of the provisions of the Clayton Anti-Trust Act, 15 U.S.C. 12-27. It shall be a Default Event, and the MTA shall notify Vendor, if the MTA is advised by its counsel that the Contract offends, or is contrary to, the provisions of said Act.

**39. Audit, Access to Records, Inspection.**

**39.1. Recordkeeping Obligations.** Vendor shall keep, and cause each subcontractor to keep, records and books of account, showing the actual cost to it of all labor, material, equipment, supplies, services, and other expenditures for which compensation is payable under the Contract.

**39.2. Audit Access; Copying.** Vendor shall provide the MTA, the New York State Comptroller, the FTA Administrator, the U.S. Comptroller General, and any of their authorized representatives' access to all of Vendor's books, documents, papers, and records that are pertinent to the Contract for the purposes of making audits, examinations, excerpts, and transcriptions. Pursuant to 49 CFR 633.17, Vendor shall provide the FTA Administrator or her/his authorized representatives, including any project management oversight contractor, access to Vendor's records and construction sites pertaining to a major capital project (as

defined at 49 U.S.C. 5302(a)(1)) that is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311. Vendor agrees that the foregoing parties shall have the right to reproduce and copy by any means full copies, excerpts, and transcriptions of such records as they deem necessary. Vendor shall maintain all books, records, accounts, and reports required under the Contract for a period of not less than seven (7) years after Contract termination or expiration, except if litigation or settlement of claims arising from the performance of the Contract occurs, in which case Vendor shall maintain same until the MTA, the New York State Comptroller, the FTA Administrator, the U.S. Comptroller General, or any of their duly authorized representatives have disposed of all such litigation, appeals, claims, or exceptions related thereto.

**39.3. Original Accounting Records; Audited Financial Records.** Vendor shall furnish any auditor with originals of all accounting records. The absence of original supporting documents, including time sheets and invoices not on regular business stationery, may result in the disallowance of the claimed expenses. The MTA, in its sole discretion, may accept photocopied records in lieu of originals, but in no event where Vendor is unable to explain the loss of original documents to the MTA's satisfaction. Vendor shall furnish to the MTA its audited financial records and statements where available.

**39.4. Record Availability.** Vendor shall make available to the MTA and its representatives, upon reasonable request, all books, records, financial statements, and tax returns that the MTA deems necessary to support all direct and indirect costs expended in connection with the Contract. Vendor shall also make available all books, records, financial statements, and tax returns for all affiliated parties to whom Vendor has made payments that are being claimed under the Contract as either direct or indirect costs.

**40. Civil Rights Requirements; Equal Employment Opportunity; Equal Pay Equity.**

**40.1. Nondiscrimination.** Pursuant to Title VI of the Civil Rights Act (as amended), 42 U.S.C. §§2000d and e, the Age Discrimination Act of 1975 Section 303 (as amended), 42 U.S.C. §6102, the Americans with Disabilities Act of 1990 Section 202, 42 U.S.C. §12132, and 49 U.S.C. §5332, Vendor agrees that it shall not discriminate against any employee or employment applicant because of race, color, creed, national origin, sex, age, or disability. Vendor further agrees to comply with applicable Federal implementing regulations and other implementing requirements that the FTA may issue.

**40.2. Race, Color, Creed, National Origin, Sex.** Pursuant to Title VII of the Civil Rights Act (as amended), 42 U.S.C. §2000e, and 49 U.S.C. §5332, Vendor shall comply with all applicable equal employment opportunity requirements of U.S. DOL regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 CFR Part 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity,"), and with all applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Contract. Vendor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. Vendor further agrees to comply with any implementing requirements that the FTA may issue.

**40.3. Age.** Pursuant to the Age Discrimination in Employment Act of 1967 Section 4, 29 U.S.C. §§621 through 634 (as amended), its implementing regulations, 29 CFR Part 1625, and 49 U.S.C. §5332, Vendor shall refrain from discrimination against present and prospective employees for reason of age. Vendor further agrees to comply with any implementing requirements that the FTA may issue.

**40.4. Disabilities.** Pursuant to the Americans with Disabilities Act Section 102 (as amended), 42 U.S.C. §12112, Vendor shall comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 CFR Part 1630, which pertain to the employment of persons with disabilities. Vendor further agrees to comply with any implementing requirements that the FTA may issue.

**40.5. Other Applicable Equal Employment Opportunity Requirements.** Vendor shall comply with all other applicable equal employment opportunity requirements of U.S. Department of Labor and FTA implementing regulations, and with any applicable Federal statutes, executive orders (including New York Executive Order 177), regulations, and Federal policies.

**40.6. Safety, Apparatus, Danger Signs, and Signals.** Vendor shall erect and maintain such danger signs, signals, red lights, guards, protective enclosures, platforms, and notices necessary to adequately protect the Work and all individuals against injury to their person or damage to their property, and shall promptly replace any of the foregoing that must be removed temporarily during the Work. If replacement is not properly made, then the MTA shall have the right to effect such replacement at Vendor's sole expense. Pursuant to Title VI of the Civil Rights Act, Vendor may be required to erect any and all signs in one or more languages in addition to English as an accommodation for persons with Limited English Proficiency.

**40.7. Non-Discrimination Requirements.** Vendor shall comply with all applicable federal, state, and local Civil Rights and Human Rights laws regarding equal employment opportunities and the provision of the Work. Pursuant to New York Executive Law Article 15 (the Human Rights Law) and all other state and federal statutory and constitutional non-discrimination provisions, Vendor and its subcontractors shall not discriminate against any employee or applicant for employment because of race, creed, color, sex (including gender identity or expression), national origin, age, disability, sex origin, sexual orientation, military status, predisposing genetic characteristics, marital status, or domestic violence victim status, and

shall not: (i) discriminate in hiring against the New York State citizen who is qualified and available to perform the work; or (ii) discriminate against or intimidate any employee hired to perform the Work. Vendor is subject to fines of fifty dollars (\$50.00) per person per day for any violation of NY Labor Law Section 220-e or Section 239, and a second or subsequent violation of such Sections constitutes a Default Event and shall result in Vendor's forfeiture of all moneys due under the Contract.

**40.8. New York State Executive Order No. 162 - Ensuring Equal Pay Equity by State Contractors ("EO 162").** Pursuant to EO 162, Vendors and Vendors' subcontractors are required to report separately the gross wages paid to each of their employees performing Work on a monthly or quarterly basis. Vendors and Vendors' subcontractors must report only gross wages for Work paid to employees during the period covered by the Report Spreadsheet. "Gross wages" shall mean those wages reported by employers to employees on their wage statements. Gross wages include every form of compensation for employment paid by an employer to his, her or its employees, whether paid directly or indirectly by the employer, including salaries, commissions, bonuses, tips and the reasonable value of board, rent, housing, lodging or similar advantage received.

**40.9. Applicability; Contract Thresholds.** For commodities and services contracts in excess of \$25,000.00, each Vendor must (a) report employee gross wages on the Workforce Utilization Report on a quarterly basis, and (b) ensure that each subcontractor performing Work reports such information on a quarterly basis, unless otherwise directed by the Contract Documents. For construction contracts in excess of \$100,000.00, each Vendor must (a) provide Workforce Utilization Reports on a monthly basis, and (b) ensure that each subcontractor performing Work also reports such information on a monthly basis, unless otherwise directed by the Contract Documents.

**40.10. Submission Requirements.** This information must be submitted electronically on the standard Workforce Utilization Form provided by the MTA as Attachment C hereto, within ten (10) days following the end of each month or quarter during the term of the Contract, as directed hereinabove. Failure to comply with the foregoing requirement of EO 162 may result in a Default Event.

**41. Americans with Disabilities Act (ADA) Access.** Vendor shall comply with 49 U.S.C. §5301(d), which states the Federal policy that elderly and disabled individuals have the same rights as others to use public transportation services and facilities, and that special efforts should be made in planning and designing those services and facilities to implement transportation accessibility rights for elderly and disabled individuals. Vendor shall comply with: (i) Rehabilitation Act of 1973 Section 504, as amended, 29 U.S.C. §794 (prohibiting discrimination on the basis of disability in the administration of programs or activities receiving Federal financial assistance); (ii) the Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. §12101 et seq. (requires that accessible facilities and services be made available to individuals with disabilities); (iii) the Architectural Barriers Act of 1968, as amended, 42 U.S.C. §4151 et seq. (requires that buildings and public accommodations be accessible to individuals with disabilities); (iv) 49 CFR Part 37; and (v) other laws, regulations, or provisions and amendments thereto pertaining to access for individuals with disabilities that may be applicable to the Contract. Vendor agrees to: (a) comply with applicable implementing Federal regulations, and any later amendments thereto, and agrees to follow applicable Federal implementing directives, and (b) include these requirements in each subcontract financed in whole or in part with FTA-provided Federal assistance.

**42. Disadvantaged Business Enterprises.**

**42.1. DBE Policy.** The MTA's policy is that Disadvantaged Business Enterprises ("DBEs") are provided the opportunity to participate in the performance of the Contract. Bidder shall take all necessary and reasonable steps to ensure that DBEs participate and perform Work. A copy of the applicable United States Department of Transportation Regulation, 49 CFR Part 26, is available from the MTA upon written request from MTA Designated Point of Contact.

**42.2. Disadvantaged Business Enterprises (DBE) Requirements.**

**42.2.1. Participation by DBEs in Department of Transportation Financial Assistance Programs.** The Contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs". The national goal for participation of DBEs is ten percent (10%). Vendor shall comply with the separate contract goals established by the MTA for the Solicitation.

**42.2.2. DBE Participation Goal.** If a contract goal has been established, Bidder shall document sufficient DBE participation to meet the goal or alternatively, document adequate good faith efforts to do so, as provided for in 49 CFR Section 26.53. Contract award is conditioned on submission of: (i) the names and addresses of DBE firms that will participate in the Contract; (ii) a description of the Work that each DBE will perform; (iii) the dollar amount of the participation of each DBE firm participating; (iv) written documentation of Bidder's commitment to use a DBE subcontractor whose participation it submits to meet the contract goal; (v) written confirmation from the DBE that it is participating in the Contract as provided in Bidder's commitment; and (vi) if the contract goal is not met, then evidence of good faith efforts to do so.

**42.2.3. Failure is a Material Breach.** Vendor shall not discriminate on the basis of race, color, national origin, or sex in the performance of the Contract. Vendor shall comply with applicable requirements of 49 CFR Part 26 in the award and administration of all DOT-assisted Contracts. Vendor's failure to comply with the requirements set out in this Section 42.2.3 (Failure is a Material Breach) constitutes a Default Event, and may result in Contract termination or such other remedy that the MTA deems appropriate. Each subcontract Vendor signs with a subcontractor must include the subcontractor's assurance of compliance with the obligations set out in this Section 42.2.3 (Failure is a Material Breach).



**42.2.4. DBE Reporting.** Vendor shall report its DBE participation obtained through race-neutral means throughout the period of performance.

**42.2.5. DBE Subcontractor Termination.** Vendor shall promptly notify the MTA whenever a DBE subcontractor performing Work is terminated or fails to complete its Work, and Vendor shall make good faith efforts to engage another DBE subcontractor to perform at least the same amount of Work. Vendor may not terminate any DBE subcontractor and perform that Work through its own forces or those of an affiliate without the MTA's prior written consent.

**42.3. Prompt Payment to DBE Subcontractors.** Vendor shall pay all DBE subcontractors, including retainage, for satisfactory performance of their contracts no later than thirty (30) days from Vendor's receipt of each payment by the MTA (including any retainage) in accordance with DOT regulations, "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs," 49 CFR Section 26.29. Pursuant to 26.29(c), Work is "satisfactorily" completed when (i) all tasks called for in the subcontract have been accomplished and documented as required by the MTA, or (ii) the MTA has made an incremental acceptance of a portion of the Work covering the subcontractor's Work. Vendor may only delay or postpone payment to a DBE subcontractor for good cause and with the MTA's prior written approval. Vendor shall include in any subcontract with a DBE subcontractor language providing that Vendor and the DBE subcontractor shall use appropriate alternative dispute resolution mechanisms to resolve any payment disputes. The MTA shall not reimburse Vendor for any DBE subcontractor-performed Work unless and until Vendor ensures that the DBE subcontractors are promptly paid for any Work that they have performed. Vendor's failure to comply with this Section 42.3 (Prompt Payment to DBE Subcontractors) shall constitute a Default Event, which may result in Contract termination or such other remedy as the MTA deems appropriate.

**42.4. DBE Reporting and Recordkeeping.**

**42.4.1. DBE Goal Documentation.** Vendor shall submit documentation concerning its performance in meeting the DBE goal during the Term.

**42.4.1.1. Contract Duration Less Than One Year.** If the Term is less than one (1) year, then within sixty (60) days of the Effective Date, unless extended by the MTA in writing, Vendor shall enter into written subcontract agreements with the DBEs listed in its Schedule of DBE Participation Form (Form A) and accompanying Intent to Perform as a DBE Subcontractor/Subconsultant/Joint Venture Form (Form B) (collectively, the "DBE Participation Forms"), or with DDCR-approved substitutes.

**42.4.1.2. Contract Duration Greater Than One Year.** If the Term is one (1) year or more, then not later than thirty (30) days before a subcontractor commences Work, unless extended by the MTA in writing, Vendor shall enter into written subcontract agreements with the DBEs listed in Vendor's DBE Participation Forms, or with substitutes approved by DDCR.

**42.4.1.3. Executed DBE Subcontracts; Subcontract Modifications; Work Schedule.** Immediately upon execution, and at any other time that DDCR requests, Vendor shall provide a copy of each of Vendor's executed subcontract agreements with DBEs to the MTA. Vendor shall submit all subcontract agreement modifications with DBEs any time a change in any items of Work, material, or subcontract value is agreed upon. Vendor shall submit a work schedule outlining when DBE subcontractors will commence and complete Work.

**42.4.1.4. DBE Monthly Reports; DBE Progress Payment.** Vendor shall submit monthly reports on progress towards meeting its DBE goal to the MTA (and otherwise as required by DDCR) using New York State Contract System's Web Based Monthly Report. Vendor shall promptly notify the MTA if any regularly scheduled progress payment is not made to a DBE.

**42.4.1.5. Risk to DBE Goal.** Vendor shall promptly notify the MTA in writing when Vendor has reason to believe its attainment of the DBE participation goal is in jeopardy. In this regard, Vendor must inform the MTA, in writing with supporting documentation, immediately upon learning that a DBE is unable or unwilling to perform the subcontracted services.

**42.4.2. False Statements or Submissions.** This Section 42 (Disadvantaged Business Enterprises) identifies statements and information that Vendor shall submit to the MTA, and Vendor's willful making of false statements or submission of incorrect information shall constitute a Default Event.

**43. Clean Air and Water Act Requirements.** Vendor shall comply with all applicable standards, orders, and regulations issued pursuant to the Federal Water Pollution Control Act (the "Clean Water Act"), as amended, the Clean Air Act, as amended, 42 U.S.C. §7401 et seq., including Clean Air Act §306, as amended, 42 U.S.C. §7606, 33 U.S.C. §1251 et seq., including Clean Water Act §508, as amended, 33 U.S.C. §1368, and Executive Order 11738. Vendor shall protect underground sources of drinking water in compliance with the Safe Drinking Water Act of 1974, as amended, 42 U.S.C. §§300f through 300j-27. Vendor shall facilitate compliance with Executive Order 11738, including reporting each violation to the MTA, and the MTA shall report each violation as required to assure notification to the FTA and the appropriate EPA Regional Office. Vendor shall include these requirements in each subcontract exceeding one hundred thousand dollars (\$100,000) financed in whole or in part with FTA-provided Federal assistance.

**44. Noise Control Code.** Pursuant to Section 24-216, Noise Abatement Contract Compliance, of Title 24 of Chapter 2 of the New York City Administrative Code (the "Noise Code"): (i) devices and activities that will be operated, conducted, constructed, or manufactured pursuant to the Contract that are subject to the Noise Code shall be operated, conducted, construed, or manufactured without violating the Code, and (ii) such devices and activities shall incorporate advances in the art of noise control developed for the kind and level of noise emitted or produced by such devices and activities, in accordance with regulations issued by the Administrator of the Environmental Protection Administration. Regulations promulgated pursuant to Section 24-216 after the Effective Date shall not alter its terms, conditions, and specifications.

**45. Rail Safety Improvement Act of 2008.** Vendor, and any of its subcontractors who employ one or more safety-related railroad employees, are required to develop and submit a training

program to the Federal Railroad Administration ("FRA") for approval and to adopt and implement the training program no later than January 1, 2018. Vendor shall read the Minimum Training and Qualifications Requirements and sign the corresponding Vendor acknowledgment (Appendix I). Vendor shall read and complete the Rail Safety Improvement Act of 2008 for Control of Alcohol and Drug Use (49 CFR Part 219) for Maintenance of Way Employees letter and sign the corresponding Vendor acknowledgment (Appendix J). Vendor's failure to timely comply with the FRA regulations and requirements set out in this Section 45 (Rail Safety Improvement Act of 2008) may subject Vendor to civil penalties, prohibit Vendor from working on MTA Property, and shall otherwise constitute a Default Event.

**46. Drug and Alcohol Testing.** If applicable, Vendor shall comply with the FTA alcohol and drug requirements set out in Appendix F (Federal Provisions). If applicable, Vendor shall also comply with the following FRA and DOT alcohol and drug policies:

**46.1. Compliance with 49 CFR Parts 40 and 219.** Vendor and its employees, agents, and representatives shall comply with 49 CFR Parts 40 and 219 in the performance of any Work. Vendor shall have in place during the Term a random drug and alcohol testing program pursuant to Part 219 of its own or an agreement with a consortium to administer Vendor's random testing program.

**46.2. Random Testing; Testing Pool.** Vendor shall randomly test, or ensure that the all maintenance of way employees who perform Work for the MTA are randomly tested, for drugs and alcohol in accordance with Part 219. A maintenance of way employee means Vendor, its employees, subcontractors, agents, and any individual performing Work on behalf of Vendor whose duties include the inspection, construction, maintenance, or repair of roadway track, bridges, roadway, signal and communications systems, electric traction systems, roadway facilities, or roadway maintenance machinery on or near track or with the potential of fouling a track, and flagmen, watchmen, and lookouts. Vendor shall establish a minimum random testing pool of fifty percent (50%) for drug testing and twenty-five percent (25%) for alcohol testing of its maintenance of way employees on an annual basis, or such other pool that the FRA designates.

**46.3. Compliance Plan Submittal.** Vendor shall submit to the FRA, and send a copy to the MTA, of its 219 Compliance Plan that complies with 49 CFR Part 219 and that details Vendor's Random Drug and Alcohol Testing Plan, or if Vendor uses a consortium, then the consortium's Random Drug and Alcohol Testing Plan. The FRA shall solely determine whether the 219 Compliance Plan meets regulatory requirements.

**46.4. Plan Submittal Applicability; MTA Rejection.** Vendor shall, within thirty (30) days of the Effective Date, submit to the MTA a Certification of Compliance with FRA Random Drug and Alcohol Use Testing Regulations (Appendix J) that complies with 49 CFR Part 219 or, if Vendor is not in compliance, a certificate that it has submitted its 219 Compliance Plan to the FRA. Vendor shall provide a copy of the 219 Compliance Plan to the MTA with the certification. The MTA shall have the right, at its sole discretion, to reject any 219 Compliance Plan that designates a consortium that is unacceptable to the MTA.

**46.5. Maintenance of Compliance Plan; Audit and Inspection.** Vendor shall, at its expense, maintain its 219 Compliance Plan and any records, data, and materials related to the Compliance Plan for a minimum of six (6) years after Vendor's completion of the Work or termination of the Contract, whichever is later. If Vendor has in place a consortium to administer its random drug and alcohol testing program, then Vendor shall ensure that any agreement with such consortium provides for the maintenance of records, data, and materials as set forth herein. Vendor shall permit the FRA and the MTA, and also shall require its employees, subcontractors, agents (including any consortium administering Vendor's random drug and alcohol testing program), and any individual who is a maintenance of way employee as defined in Part 219, to permit FRA and MTA representatives, to inspect all records, data, and materials related to Vendor's 219 Compliance Plan. Such records shall be made available, upon the FRA's and the MTA's request, at Vendor's place of business during normal working hours or such other place as the FRA and the MTA designates.

**46.6. Drug and Alcohol Certification; Condition Precedent.** Vendor shall submit to the MTA a written certification attesting that it is in compliance with its obligations under Part 219, including the establishment of random test pools and the actual testing of its employees as set forth in Part 219. Vendor shall submit its certification, together with the related testing data (in a form compliant with Part 219), to the MTA on a semi-annual basis, with the semi-annual reporting requirement calculated from the Effective Date. Unless the MTA otherwise authorizes in writing, Vendor shall not perform any Work subject to 49 CFR Part 219 unless Vendor has implemented a random drug and alcohol testing program in accordance with 49 CFR Part 219.

**46.7. Civil Penalties; Order of Precedence.** Failure to comply with this Section 46 (Drug and Alcohol Testing) may subject Vendor to civil penalties and shall constitute a Default Event. In the event of any inconsistency between the terms of this Section 46 (Drug and Alcohol Testing) and the FRA requirements, 49 CFR Part 219 shall govern.

**47. Incorporation of Additional Terms.**

**47.1. Appendix F (Federal Provisions).** In addition to certain provisions included in this Schedule 1 (Applicable Laws and Regulations) that apply to Solicitations subject to federal requirements, the MTA has prepared Appendix F (Federal Provisions) that includes additional federal requirements applicable to Solicitations involving federal funding or that are otherwise subject to federal requirements. The MTA shall provide Appendix F (Federal Provisions) as part of the Contract Documents to the extent it applies to the specific Solicitation, and Vendor can also request Appendix F (Federal Provisions) upon request.

**47.2. Schedule 3 (Connecticut Provisions).** If Vendor provides any Work in Connecticut, then the provisions of Schedule 3 (Connecticut Provisions) shall apply to the Contract, and the MTA shall provide Schedule 3 (Connecticut Provisions) as part of the Contract Documents.

# **SPECIAL NOTICE TO VENDORS**

## **VENDOR DEBARMENT FOR MTA CONTRACTS**

In accordance with Public Authorities Law §1279-h, the Vendor awarded the contract resulting from this solicitation will be debarred and will not be permitted to bid on future MTA contracts for a period of five (5) years if, pursuant to regulation established by the MTA for the debarment of Vendors, a final determination is made by the MTA that such Vendor failed to substantially complete all work within the time frame set forth in such contract, including any subsequently executed change order, by more than ten percent of the contract term, or that the Vendor's claimed costs exceeds ten percent or more of the total contract cost, including costs associated with any subsequently executed change orders, and where such claimed costs are deemed to be invalid pursuant to the contractual dispute resolution process.

## **ATTACHMENTS AND APPENDICES**

This Solicitation consists of the following selected documents (note: attachments with ■ are always required; additional selections are denoted by ☒;). Agency-specific exhibits not listed below may be included as part of a solicitation.

■	Inquiry Cover Sheet	1
■	MTA Purchase Order Standard Terms and Conditions (with Schedule 1)	2-17
■	SPECIAL NOTICE TO VENDORS REGARDING DEBARMENT	18
■	Information for Bidders (Non–RFP Solicitations)	19-27

*Note: Price Schedule and each of the following Attachments are separately numbered:*

■	Price Schedule(s) (Attachment A.1A & A.1B to be provided separately)
●	Attachment A – Scope of Work/Specifications
●	Attachment B – All-Agency Responsibility Guidelines and Questionnaire
☐	Attachment C – Reserved
●	Attachment D – Omnibus Procurement Act Provisions
●	Attachment E – Prompt Payment Regulations
●	Attachment F – New York State Lobbying Law Compliance (with Forms 1 and 2)
●	Attachment G – MTA Vendor Code of Ethics
●	Attachment H – Iran Divestment Act Certification
●	Attachment I – New York State Prevailing Wage 1269-g Certification and Schedules
☐	Appendix A – Compensation Provisions
●	Appendix B – Affirmative Action/Equal Employment Opportunity Requirements
●	Appendix C – Guidelines for Contractors and/or Insurance Requirements
●	Appendix D(i) – Minority and Women Owned Business Enterprises Requirements
●	Appendix D(ii) – Service-Disabled Veterans (SDVOB) Requirements
☐	Appendix E – Financial Disclosure
☐	Appendix F – Federal Provisions (with certifications)
☐	Appendix G – Executive Order 175 Certification
☐	Appendix H – Domestic Steel Certification
☐	Appendix I – Rail Safety Improvement Act Acknowledgment
☐	Appendix J – FRA Random Drug and Alcohol Use Testing Requirements Certification
■	Appendix K – Executive Order 177 Certification
●	Appendix L – Sexual Harassment Prevention Compliance
☐	Appendix M – FTA 49 CFR 40 and 655 Drug and Alcohol Testing
●	Schedule A - Executive Order 16 Certification
●	Schedule D - MTA Cybersecurity Provisions

## **SECTION I: INSTRUCTIONS TO BIDDERS; REQUIREMENTS**

1. The Bid must be submitted on the Inquiry Cover Sheet provided, and Bidder must sign the Inquiry Cover Sheet where indicated.
2. **Electronic Submission.** Unless otherwise required by the MTA, all bids must be sent to the MTA via the My MTA Portal. If a Bidder cannot, or does not, wish to send his/her response via the My MTA Portal, Bidder must promptly contact the Designated Point of Contact via telephone.
3. Bids transmitted to MTA by fax or email are not acceptable. Any such Bids received by the MTA may be rejected

as non-responsive.

4. **Site Visit; Pre-Bid Conference; Bid Opening.** Bidders planning to attend the virtual Bid Opening, virtual pre-bid conference, or site visit, must notify the MTA Designated Point of Contact at least 48 hours prior to the scheduled date/time. Please refer to the Inquiry Cover Sheet for the applicable contact information. All Bidders must arrive at least thirty minutes before the event to allow sufficient processing time by applicable security. A photo ID will be required by building security for entry.

☒ The MTA will host a site visit(s): Date & Start Time for 'Class A' Site Visit : [4/22/2025, 10:00AM ET](#)

Date & Start Time for 'Class B' Site Visit : [4/23/2025, 9:00AM ET](#)

☒ The MTA will host a pre-bid conference: Date: [4/9/2025](#) Time: [10:00AM ET](#)  
Location: [Virtual via Microsoft Teams application.](#)

☒ Special instructions: [Site Visit instructions/location information to be provided separately by the MTA.](#)

5. MTA reserves the right to reject any or all Bids in its sole and absolute discretion.
6. MTA reserves the right to cancel this Solicitation at any time, if MTA deems such cancellation to be in its best interest. The MTA shall have no liability for cancellation of an award prior to issuance of a Purchase Order to the successful Bidder. A Bidder assumes sole risk and responsibility for its expenses prior to issuance of a Purchase Order and the successful Bidder shall not commence work until receipt of a Purchase Order.
7. Bidder shall not take or incorporate any exceptions, disclaimers, contingencies, additional terms, or any other modification to any terms and conditions of the Solicitation (collectively, "Exceptions"). Bidder expressly agrees that no Exceptions shall modify the terms and conditions of the Solicitation or the Contract awarded from this Solicitation including, but not limited to, those terms and conditions set out in the Contract Document titled "MTA Purchase Order Terms and Conditions." Bidder acknowledges that submitting Exceptions may result in its Bid being rejected as non-responsive.
8. **Price Schedule.** Bidder must provide a quote on all items as stated in the Price Schedule for the Bid to be considered responsive.
- Unless otherwise specified in the Contract Documents, one (1) award will be made for all items listed therein. All items are to be quoted Inside Delivery and F.O.B. Destination.
  - The Bidder agrees that solely for the purpose of evaluating Bids offered for the Work, its total Bid price shall be computed as the summation of the prices of the items bid upon in the Price Schedule. This summation will be referred to as the Gross Sum Bid for that Price Schedule in words and figures. In case a Bid is submitted in both words and figures and there is a discrepancy between the price in words and that in figures, the price in words will generally be taken as the Bid price. The MTA reserves the right, however, to treat the price in figures as the Bid price where it is evident that the Bidder has made a mistake in writing the Bid price in words.
  - In the event of a discrepancy between the unit price and the extended price, the unit price will prevail and the extended price will be corrected accordingly.
  - Bidders are encouraged to include in their cost proposals any discounts, or other savings or benefits that are offered to MTA based on: (a) electronic submission of invoices; (b) frequency of invoicing; and (c) early

payment of an invoice.

- e. In the event that the Price Schedule reflects any item(s) as to which quantities are estimated, the Bidder acknowledges that the quantities specified in the Price Schedule are given only as a basis for the Bid evaluation and are not in any way guaranteed or represented as correct or intended to be relied upon, and they shall not be taken as final and shall form no basis for any claim in case they do not correspond with the final measurements or quantities. It is further acknowledged that the MTA reserves the right to increase, diminish, or omit entirely any of the quantities or items as provided by this Solicitation.
- f. In addition to submission of an invoice to the MTA Business Service Center, a Vendor will be required to submit to the Project Manager any required documentation to back up an invoice. Acceptable format and delivery method for electronic invoices are described in Section 7 (Consideration; Invoices and Payment) of MTA Purchase Order Terms and Conditions.
- g. **Domestic Steel Certification (Appendix H).** If the Solicitation calls for the purchase of “steel products”, as such term is defined in Section 19 of Schedule 1 to the Purchase Order Terms and Conditions, Bidder must certify the amount of its bid utilizing Appendix H, and such certification must be submitted with the Bid.

**Note:** Discount payment terms will not be utilized by the MTA in determining the low bid.

- 9. The MTA reserves the right to inspect a Bidder’s premises prior to the award of a Purchase Order for acceptability and compliance with the requirements as stated in the specification. Any Bidder the MTA determines as non-compliant or technically unqualified will be deemed not eligible to receive an award as a result of this Solicitation.
- 10. **MTA Designated Point of Contact.** The Designated Point of Contact for this Solicitation is the Manager identified on the Inquiry Cover Sheet. Pursuant to the Lobbying Law (see, Attachment F) and the MTA Vendor Code of Ethics, the only contact person authorized by the MTA regarding this Solicitation, i.e., from the date of Inquiry issuance until the award of the Contract, is the Designated Point of Contact. The Lobbying Law defines “contact” as oral, written or electronic communications with the MTA during the procurement process which is intended to influence the procurement.
- 11. Each prospective Bidder must examine the Solicitation documents carefully and, before bidding, may request the MTA’s Chief Procurement Officer for an interpretation or correction of each ambiguity, inconsistency, or error therein which should be discovered by a reasonably prudent Bidder.
- 12. **Vendor Responsibility Questionnaire (Attachment B).** All Contracts of \$250,000.00 or greater require the completed and signed Vendor Responsibility Questionnaire as part of the Bid.
- 13. **Omnibus Procurement Act of 1992 (Attachment D).** This Solicitation is subject to the Omnibus Procurement Act of 1992 (see, Attachment D), which requires, among other things, that Vendors make reasonable efforts to encourage the participation of New York State business enterprises, including M/WBEs as Bidders, subcontractors and suppliers on the Work.
- 14. **Prompt Payment Regulations (Attachment E).** All payments made by the MTA to the Vendor shall be in accordance with Public Authorities Law Section 2880 (prompt payment), and the MTA’s implementing regulation 21 NYCRR Part 1002, which generally requires payment within 30 days of receipt of invoice.
- 15. **New York State Lobbying Law of 2005 (Attachment F).** All MTA procurements in excess of \$15,000.00 annually are subject to New York State Finance Law Sections 139-j and 139-k (the “Lobbying Law”), which

imposes restrictions on “contacts” during the procurement process; and addresses the disclosure of contacts and the responsibility of Bidders during procurements. To be compliant with the Lobbying Law, Bidders are required to complete and submit with their Bid Attachment F, which includes Forms 1 and 2 attached thereto. The affirmation, certifications, and disclosure of prior non-responsibility determinations submitted with Bidder’s Bid are incorporated into the Contract by reference. In the event of certain Contract modifications or Change Orders, a Vendor may be required to submit new disclosure and certification forms (Disclosure of Prior Non-responsibility Determinations and the “Affirmation and Certification”) as part of the Change Order process. For additional information regarding the Lobbying Law, Bidders may contact the New York State Office of General Services at (518) 474-5607, or access their website: <http://www.ogs.state.ny.us/aboutOgs/regulations/defaultAdvisoryCouncil.html>.

16. **Metropolitan Transportation Authority Vendor Code of Ethics (Attachment G)**. The MTA Vendor Code of Ethics (the “Code”) is applicable to all Vendors, as defined by the Code, involved in the procurement process for the award and performance of the Contract. Additional information concerning the Code is contained in the Contract Documents. All Vendors involved in this Solicitation and during the performance of any resultant Contract are subject to the Code, which is available for Bidder’s immediate review on the MTA website at [www.mta.info/mta/procurement/vendor-code.htm](http://www.mta.info/mta/procurement/vendor-code.htm). All Bidders must certify compliance with the Code. **The Bidder’s Certification of Compliance with the MTA Vendor Code of Ethics is included under SECTION II – GENERAL CONDITIONS – of this Inquiry.**
17. **Iran Divestment Act (Attachment H)**. A Bidder must submit certification (see Attachment H) in accordance with New York State Finance Law §165-a (Iran Divestment Act of 2012) that it is not on the “Entities Determined to be Non-Responsive Bidders pursuant to the New York State Iran Divestment Act of 2012” (“Prohibited Entities List”) posted on the New York State Office of General Services website (<http://www.ogs.ny.gov/about/regs/docs/ListofEntities.pdf>). Certification must be returned with Bid.
18. **Prevailing Wage (Attachment I)**. Under New York State Labor Law, contractors and subcontractors must pay the prevailing rate of wage and supplements (fringe benefits) to all laborers, workers or mechanics under a public work contract. Employers must pay the prevailing wage rate set for the locality where the work is performed. If any of the Work required by this Solicitation is subject to a prevailing wage, as determined by the New York State Department of Labor, a Bidder, in evaluating and determining its overall Bid and, if applicable, its Bid for an individual line item, shall take into account the applicable prevailing wages. Bidder’s failure to comply with a prevailing wage requirement may be considered a Default Event by the MTA, in its sole and absolute discretion. If this Solicitation is subject to prevailing wage, Bidders must complete a Public Authorities Law Section 1269-g certification (Attachment I).
19. **Affirmative Action/EEO Requirements (Appendix B); Executive Order 177 (Appendix K)**. As a pre-condition to entering into a valid and binding Contract pursuant to this Solicitation, the Bidder agrees to the terms and conditions of non-discrimination as set forth in Appendices B and K hereto. Certifications of compliance with such requirements must be submitted as part of the Bid.
20. **Minority and Women-owned Business Enterprises Program (Appendix D(i))**. It is the MTA’s policy that Minority and Women-owned Business Enterprises (“M/WBEs”) shall have the maximum opportunity to participate in the performance of this Contract. As such, this Contract is subject to the provisions of New York Executive Law Article 15-A (the “State MBE/WBE Law”) and implementing regulations set forth in Chapter XIV, Parts 140 to 145 of Title 5 NYCRR (the “Regulations”) establishing a policy and program to promote equality of economic opportunity for business enterprises owned by minority group members and women. If there is a difference between what is set forth in these paragraphs and what is set forth in the State MBE/WBE Law and the Regulations, the State MBE/WBE Law and the Regulations shall govern. A copy of the State MBE/WBE Law

and the Regulations will be provided upon written request to the Manager.

**Goals.** The following is required for this Contract:

MBE	<u>15</u>	%
WBE	<u>15</u>	%

☐ This Contract does not contain any specific numerical goals for the utilization of M/WBEs.

The successful Bidder and the MTA agree, as a condition for the Contract, to be bound by the provisions of Executive Law Article 15A, as well as other provisions of the State MBE/WBE Law.

**21. Service-Disabled Veteran Owned Businesses (Appendix D(ii)).** New York State Executive Law Article 17-B provides for meaningful participation in public procurements by certified Service-Disabled Veteran-Owned Businesses ("SDVOB"). Bidders are expected to consider SDVOB participation when fulfilling the Contract requirements, including participation as subcontractors, suppliers, or in other partnering or supporting roles. The goal specified for SDVOB utilization is expressed as a percentage of the Total Contract Price and is based on the current availability of qualified SDVOBs: 6 %.

**22. Federal Provisions (Appendix F).** In the event part, or all, of this Solicitation is funded by federal monies, or to which federal regulations apply, the Federal Provisions in Appendix F shall be incorporated into and made a part of this Solicitation; and Bidders must complete all certifications therein as part of their Bid submission. In such case, the MTA may require a separate Contract goal for Disadvantaged Business Enterprises (DBE):

☐ This Contract contains a specific numerical goals for the utilization of DBEs: \_\_\_\_\_ %

☒ This Contract does not contain any specific numerical goals for the utilization of DBEs.

**23. Executive Order 175 - Net Neutrality (Appendix G).** If this Solicitation seeks to procure internet services as such is contemplated by Executive Order 175 ("EO 175"), Bidders must certify compliance with EO 175 as provided in Appendix G. This certification shall be completed prior to Contract award; failure to do so may result in a Bid being deemed unresponsive.

**24. Rail Safety Improvement Act Acknowledgment (Appendix I).** The MTA is subject to the Rail Safety Improvement Act of 2008 ("RSIA") and, as such, each MTA Vendor (and its subcontractors) who employs one or more safety-related railroad employees is required to indicate whether RSIA is applicable and if so, certify compliance with RSIA. MTA Vendors who are subject to RSIA and do not comply with the regulations will not be permitted to work on MTA property, and may be subject to termination of their Contracts for failure to comply with applicable law.

**25. Drug and Alcohol Testing (Appendices J and M).** If this Solicitation requires either (a) Work to be performed by a maintenance of way employee, as defined by 49 CFR Part 219, or (b) a portion of the Work to be performed falls within the definition of a "Safety Sensitive Function", as defined by 49 CFR Parts 40 and 655, the Vendor is required to submit certifications of compliance in accordance with Appendices J and M, respectively.

**26. Sexual Harassment Prevention Compliance (Appendix L).** This Solicitation is subject to New York State Finance Law Section 139-L, which requires Vendors bidding on competitive solicitations for Work or Services performed or to be performed, or goods sold or to be sold, to certify implementation of a written sexual harassment prevention policy and corresponding annual training.

**27. Employment Eligibility Verification (Form I-9).** The Vendor is responsible for complying in all respects with the Immigration Reform and Control Act of 1986, as amended ("IRCA"), with respect to all persons



performing Work on its behalf in connection with this Solicitation, including employees and agents of Vendor and any subcontractor/supplier. For each such employee/agent, including a person who is a United States citizen, Vendor is responsible for completing and retaining and causing any subcontractor/supplier to complete and retain, a Form I-9, in accordance with the applicable laws and regulations. The Vendor will assume any and all liability, including the defense thereof, that may result from a claim or finding that the Vendor or any subcontractor/supplier violated the IRCA with respect to any person performing Work on its behalf in connection with this Contract.

**28. New York State Comptroller Review/Approval.** Pursuant to Public Authorities Law §2879-a, the Contract resulting from this Solicitation may be subject to review and/or approval by the Office of the State Comptroller ("OSC"), and shall not be valid, effective or binding until it has been approved by the OSC, if such review and/or approval is required.

**29. Award Procedure.**

- a. An award shall be made to the lowest responsive and responsible Bidder. The MTA reserves the right, in its sole and absolute discretion: (i) when it deems it to be in the public interest to bypass the lowest responsive and responsible Bidder and to accept another Bid; (ii) to waive any informalities or to reject any or all Bids as it may determine; and/or (iii) to award by either class or item.
- b. In the event of tie Bids, the MTA reserves the right to determine the successful Bidder by lot or otherwise in its sole and absolute discretion.
- c. The MTA will electronically issue either a Notice of Award or Purchase Order informing the successful Bidder that its Bid has been accepted. Such award will be effective upon the date and time transmitted by the MTA, and is also available on the My MTA Portal. In lieu of the above, the MTA may award the Contract by delivering a copy of the duly executed Contract to the successful Bidder. Notwithstanding the fact that a Bidder's submission of its Bid binds the Bidder to the Contract without having to subsequently execute the Contract, a Bidder may be required by the MTA to execute one or more counterparts of the Contract.

**30. Bid/Award Protests.** A Bidder may file a Bid protest of any nature, including MTA determination(s) pertaining to Bidder responsiveness, Bidder responsibility and alleged restrictive specifications. The MTA will consider all protests or objections regarding the award of this Contract.

- a. A protest must be filed as soon as practical after grounds for the protest have been ascertained. Protests based upon restrictive specifications or alleged improprieties that are apparent prior to Bid opening must be filed no later than three (3) business days prior to Bid opening.
- b. Protests must be submitted in writing to the Manager and include, at a minimum, the following:
  - i. Name, address, telephone number and fax number of protester.
  - ii. Identification of the Solicitation or Contract number.
  - iii. A detailed statement of the legal and factual grounds for the protest including copies of relevant documents.
  - iv. A statement of what relief is requested.
- c. The MTA will consider protests regarding the award of a Contract received within thirty (30) days after the Contract is awarded. The Chief Procurement Officer, or his or her designee, shall have the authority to resolve the protest prior to commencement of an action in court.
- d. The MTA retains sole discretion to stay the award pending its final determination of the protest.

- e. The exercise of this protest procedure shall not be deemed to extend a protestor's time to pursue its remedies in court.

**31. Bidder's Qualifications.**

- a. Responsibility. In addition to all other requirements provided herein and in the Contract, in order to qualify as a responsible Bidder, a Bidder must be prepared, upon the MTA's request, to prove to the MTA's satisfaction that it has the integrity, skill and experience to faithfully perform under this Contract and that it has the necessary facilities and financial resources to provide the required Goods and/or Services in a satisfactory manner and within the time specified. Bidders submitting Bids whose value is \$250,000.00 or more, or in excess of \$100,000.00 and includes "Special Circumstances" as that term is defined in Attachment B (All-Agency Responsibility Guidelines and Questionnaire), shall submit a completed Attachment B with its Bid.
- b. Skill and experience. To be considered skilled and experienced, a Bidder must show, among other Contract requirements, that it has satisfactorily supplied Goods and/or Services of the same general type as the Goods and/or Services required by this Solicitation.
- c. For use with Requirements Contracts Solicitations only; applicable only when checked: ☐  
In the event that Goods can only be obtained directly from the manufacturer(s) of such Goods, Bids will only be considered from those manufacturers or their authorized distributors. Bidders shall have readily available at least 1/12 of the estimated quantity of the Goods bid upon and must be actively engaged in the sale of the required Goods. Bidder is required to execute a manufacturer's certificate and submit it with the Bid. Failure to execute this certificate will render a Bid non-responsive.

**32. Bid Withdrawal**

- a. By submitting a Bid, a Bidder irrevocably offers a 90-day period commencing with the opening of Bids to enter into a Contract, if awarded, as hereinafter provided.
- b. After the expiration of the aforesaid 90-day period, a Bid may be withdrawn by a Bidder who has otherwise complied with all of the requirements of this Solicitation by serving the MTA with a written notice of withdrawal. An award made by the MTA prior to its receipt of the notice of withdrawal will be valid, notwithstanding that such award is made after expiration of the 90-day period. For a written notice of withdrawal to be effective, it must be clear, unequivocal and without conditions.

**33. Bidder's Information.** No specifications, drawings, sketches, models, samples, tools, computer programs, technical information or data, written, oral or otherwise, furnished by Bidder to the MTA as part of its Bid or in contemplation hereof shall be considered by Bidder to be confidential or proprietary.

**34. "Or Equal" Bidding.** The MTA shall be the sole judge of the acceptability of items offered "as equal" to that specified by the Solicitation and may reject any item for any reason including, without limitation, the MTA's inability to readily determine that the item is an equivalent. The Bidder must submit proof of form, fit and function equivalency to the satisfaction of the MTA, including a non-returnable sample if requested by the MTA, that the item the Bidder is offering is equal to the required Goods in quality, performance and such other characteristics as the MTA may deem relevant.

The MTA will consider as proof of equivalency an independent laboratory certification concluding that the Bidder's item(s) meet or exceed the MTA's Solicitation specification and/or drawings. The laboratory must be accredited by the American Association for Laboratory Accreditation or be otherwise acceptable to the MTA. Such proof shall be submitted at the time of Bid opening. A Bidder offering an "Or Equal" which is not acceptable

will be deemed non-responsive, unless the Bidder expressly states in its Bid that it will furnish the specified Good(s) if the "Or Equal" offered is not accepted by the MTA. If the Bidder fails to name a substitute item in its Bid, it will be deemed to be offering the specified Good(s).

35. **Bid Mistake.** A Bidder who seeks to rescind its Bid due to a mistake or error in preparation of the Bid shall, within 48 hours of bid opening, notify the MTA in writing, or orally with a prompt written confirmation. The notice shall specify the details of the error or mistake. The MTA shall evaluate the alleged bid mistake and determine if the Bidder will be permitted to rescind its Bid. To assist in its determination, the MTA may conduct a hearing on the matter, wherein the Bidder shall, if requested by the MTA, present testimony and documentation, including the original Bid sheets and calculations. The MTA's determination of whether to rescind a Bid shall be made in its sole and absolute discretion, and shall be final and binding upon a Bidder.
36. **Submission of Samples.** If the MTA requests samples from a Bidder, the samples shall be delivered to the MTA no later than five (5) days after Bid opening, unless the MTA requests a different time. Samples shall be: (a) submitted to the MTA-designated location; (b) be properly marked; and (c) submitted free of charge. The MTA shall not be responsible for any samples which are destroyed or mutilated by examination. If samples are not removed from the MTA's premises within fifteen (15) days after written notice to a Bidder requesting removal, the samples shall be considered abandoned property and the MTA shall dispose of them at Bidder's expense.

## **SECTION II: GENERAL CONDITIONS**

1. The Bidder is required to complete and return with its Bid the forms required by Section III below which, depending upon the Work procured, may include, without limitation, certificates of insurance and proof of prevailing wage compliance as required by the MTA.
2. Payment shall be rendered in accordance with Public Authorities Law Section 2880 (see, Attachment E).
3. **Bidder's Certification of Compliance with the MTA Vendor Code of Ethics.** In accordance with the Code, which is incorporated herein by reference, the Bidder, by signing this Bid, certifies that during the course of this Solicitation and any resultant Contract:
  - a. The Bidder has notice of all of the terms of the Code;
  - b. No Gift, as defined by the Code, has been or will be offered to the MTA in connection with this Solicitation or any resultant Contract;
  - c. No conflicts of interest exist or will exist;
  - d. All officers and personnel of the Bidder who have interacted or will interact with the MTA have been or will be provided a copy of the Code; and
  - e. The Bidder will obtain certifications similar to those made herein from all of its lower tier subcontractors, subconsultants and suppliers that the Bidder engaged or is soliciting for work under any Contract resulting from this procurement. Receipt and retention of these lower tier certifications shall be subject to audit by the MTA.
4. Any capitalized terms used herein but not defined shall have the meanings ascribed to them in the MTA Purchase Order Terms and Conditions.
5. The MTA Purchase Order Terms and Conditions shall govern this Contract, with no exceptions. In the event of a conflict between and among the various documents of this Inquiry, the terms of the Purchase Order Terms and Conditions shall prevail.
6. Any MTA agency may utilize the same pricing, terms and conditions as set forth in this Contract.

### **SECTION III: INFORMATION/DOCUMENTS TO BE FURNISHED BY BIDDER**

To be considered responsive, each Bid submitted must include the following information and documents:

1. State below Bidder's employee or representative who will be responsible for the administration of any Purchase Order or Contract which may result from this Solicitation:

Name:	Title:
Email address:	Business phone number:
Fax number:	

2. Completed Inquiry Cover Page, acknowledging receipt and agreeing to be bound to all terms and conditions of this Solicitation and the Contract Documents, including but not limited to the Purchase Order Terms and Conditions, Scope(s) of Work (if any), the Bid/Price Schedule and all Addenda (if any) to this Solicitation, through and including the total number of addenda issued.
3. Completed Price Schedule(s).
4. Any samples required by this Solicitation, including but not limited to technical specifications.
5. The Bidder is required to complete and return with its Bid the attachments, appendices, certifications, and exhibits listed in the ATTACHMENTS section of this Information for Bidders, and any and all other forms issued by the MTA as part of this Solicitation.

### **SECTION IV: BIDDER INQUIRIES/ADDENDA**

Any questions, including requests for clarification, interpretation or amendments regarding this Inquiry must be made in writing to the Designated Point of Contact on the Inquiry Cover Page. Fax or email is acceptable. Fax – (646) 376-0278; Email – see the Inquiry Cover Page, both to the attention of the Designated Point of Contact. All such questions to be considered shall be received by MTA Procurement no later than two (2) business days before the due date of this Inquiry. Any such interpretation, clarification or amendment, as well as any additional provisions MTA may decide to include in the Inquiry, will be issued in writing by MTA as an addendum to the Inquiry and will be sent to each person/firm recorded as having been sent a copy of the Inquiry, in such medium (e.g. email) that the MTA determines. Upon such mailing the addendum shall become part of the Contract.

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**PRICE SCHEDULE(S)**

**ATTACHMENT A.1A & ATTACHMENT A.1B**  
to be provided separately by the MTA in .xlsx format

**ATTACHMENT A**  
**SCOPE OF WORK / TECHNICAL SPECIFICATIONS**  
**LONG ISLAND RAIL ROAD (LIRR)**

**Maintenance, Repair, and Upgrade of**  
**Heating, Ventilation, & Air Conditioning (HVAC)**  
**Equipment Located at:**

**“CLASS A” - LIRR Arch Street Facility**

**“CLASS B” - LIRR Signal, Communications, & Substations Departments**

*Rev. March 2025*

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## **ATTACHMENTS**

**Attachment A.1A\*** – Price Schedule (A) for ‘CLASS A’ LIRR Arch St. Facility

**Attachment A.1B\*** – Price Schedule (B) for ‘CLASS B’ LIRR Signal, Communications, & Substations Depts.

*\*To be provided as separate files in .xlsx format.*

**Attachment A.2A** – Equipment List for ‘CLASS A’ LIRR Arch St. Facility

**Attachment A.2B** – Equipment List for ‘CLASS B’ LIRR Signal, Communications, & Substations Depts.

**Attachment C** – LIRR Safety & Roadway Worker Protection Training



## 1.0 OVERVIEW AND GENERAL REQUIREMENTS

The purpose of a Heating, Ventilating, and Air Conditioning (HVAC) system is to provide thermal comfort to occupants within an environment and maintain good indoor air quality through filtration. The goals of this contract are to:

- Optimize HVAC system operations.
- Increase system efficiency and reduce energy consumption.
- Achieving equipment life expectancy.
- Reduce Indoor Air Quality (IAQ) issues and end-user complaints.
- Provide occupants with thermal comfort.

An effective service and maintenance program is essential for achieving these goals. This specification defines the labor, materials, equipment, and supervision required by Long Island Rail Road (LIRR) to perform maintenance and repairs of HVAC equipment located on LIRR properties and facilities.

*The period of performance shall be three (3) Years with two (2) 1-Year options to extend at the MTA's sole discretion.*

1.1 The Contractor shall furnish all labor, parts, materials, equipment, and supervision to provide LIRR with the following services to its HVAC equipment:

- a) Preventive Maintenance [Section 3].
- b) On-Call / Remedial Service [Section 4].
- c) Replacements of units deemed beyond useful life.
- d) New Installations.

1.2 The locations serviced under this contract include:

**"CLASS A" - LIRR Arch Street Facility**, including but not limited to its:

- Maintenance of Equipment (MoE) Shop,
- Engineering Support Building,
- Extraordinary Interior Cleaning Building,
- Storage Building,
- Office Trailers, and
- Miscellaneous buildings and or structures as required.

**"CLASS B"** - Various structures, huts, and office trailers throughout all:

- **LIRR Signal Department,**
- **LIRR Communications Department, and**
- **LIRR Substations Department locations.**

During the term of this contract, the LIRR shall have the right to add or delete HVAC equipment as required. Should there be a change in pricing due to an addition or deletion, the new price shall be mutually agreed upon by the LIRR and the Contractor.

- 1.3 It shall be understood that LIRR existing HVAC equipment includes but is not limited to: air handling units, dampers, control panels, roof top packaged units, gas fired rooftop HV units, split AC units, thermostats, exhaust and intake fans and all associated controls, switches, contactors, and other interconnected devices.
- 1.4 The Contractor is responsible for all electrical work (including control wiring) from local disconnect, safety switch, or circuit breaker closest to the equipment.
- 1.5 Gas Equipment, Steam, Condensate & Water Piping shall be the Contractor's responsibility from the closest to the unit shut off valve or union (fitting). The general piping that runs through the buildings to and from a piece of equipment after the union (fitting) as noted above are the LIRR's jurisdiction.
- 1.6 All apparatus, devices, etc. attached to or connected to a device or piece of equipment shall be considered part of the equipment for purpose of this contract.
- 1.7 Prior to any installation, repair, or modification, the Contractor shall submit detailed documents including specifications, drawings, and proposed rigging plans (if applicable) to LIRR's Facility Manager or Designee for approval.
- 1.8 The Contractor shall document all Work performed and provide a detailed breakdown of labor hours and materials used when an invoice is submitted to LIRR.
- 1.9 The Contractor shall not perform any repairs, modification and/or replacement work related to the HVAC System until the work has been approved and verified by LIRR's Facility Manager or Designee. The Contractor shall not be compensated for any Work performed without LIRR approval.
- 1.10 The Contractor shall become familiar with the original equipment manufacturer's technical specifications and operations & maintenance manuals. All Work shall be performed in strict accordance with such documents, ASHRAE Standards and industry best practices.
- 1.11 Work areas are to be maintained in a neat and safe manner while the Work is progressing. When the Work is completed for the day, work areas are to be cleared of debris and left in a safe, clean condition. The Contractor shall be responsible for disposing of all debris in accordance with LIRR procedures and applicable laws, rules and regulations.
- 1.12 The Contractor shall provide a staffed telephone number(s), capable of reaching a live person, 24 hours a day, 365 days a year. Recording devices, voicemail, pagers, etc. will not be permitted.
- 1.13 The Contractor shall use cellphone and email to expedite communication between LIRR and the Contractor, its office, technicians and supervisors.

ATTACHMENT A

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- 1.14 During the term of the contract, it shall be the responsibility of the Contractor to affix and maintain equipment identification numbers on all HVAC equipment. The identification numbers shall correspond to the equipment's Unit Number listed in [Attachment A.2A /A.2B – Equipment Lists]. Should the Contractor or LIRR's Facility Manager or the manager's designee discover a piece of equipment mislabeled or unlabeled, the Contractor shall affix a new equipment ID within five (5) business days of such notification.
- 1.15 The Contractor is responsible for and shall provide its technicians with all the tools and equipment necessary to perform all work specified herein. LIRR is not responsible for supplying the Contractor with tools or equipment necessary to perform the Work.
- 1.16 The Contractor shall provide oversight and quality assurance to ensure the Work is being performed in accordance with the Technical Specifications.
- 1.17 The Contractor shall be authorized and certified by Air Conditioning Contractors of America (ACCA) and the Sheet Metal and Air Conditioning Contractors National Association (SMACNA), and National Environmental Balancing Bureau (NEBB).
- 1.18 Material and Parts Requirements:
- a) All filters and belts shall be replaced with OEM or approved equivalent per manufacturers specifications and documented as detailed in Section 3.0.
  - b) Replace all filters at the frequencies specified in Section 3.0 or at the internals noted otherwise on [Attachment A.2A/A.2B - Equipment List(s)]. Filters for air conditioning units and air handling units shall be replaced with FARR 2-30/30 pleated filters or LIRR approved equal.
  - c) All belts shall be Notched V-Belts.
  - d) All replacement parts shall be Original Equipment Manufacturers (OEM) components or deemed an "or equal" by LIRR. All equal parts shall be approved by LIRR prior to the Contractor using such part for the Work.
  - e) The Contractor shall provide all replacement parts and components for LIRR's HVAC equipment within five (5) business days of LIRR initiating a service call.
  - f) All replacement equipment shall include a warranty that covers parts and labor for one (1) year. When and where available, LIRR requests that replacement compressors shall be purchased with an extended warranty. All warranties shall

be effective upon acceptance of the completed installation of the equipment through a signed work ticket by LIRR Facility Manager or Designee.

- g) In the event that any equipment repaired by the Contractor malfunctions, upon discovery/notification of such malfunction, the Contractor shall make any corrective repair or adjustments within 24 hours and at no additional cost (including parts and labor) to LIRR.
  - h) Extended shut-down (over 8-hours) of the any of the HVAC unit or exhaust fan due to the lack of replacement parts shall be considered unacceptable, regardless of the cause of the shut-down. LIRR would consider such event to be a breach of contract terms and conditions.
- 1.19 All parts removed and replaced during the performance of the Work shall be left at the facility for inspection by LIRR, unless otherwise directed by the LIRR Facility Manager or Designee. The Contractor shall obtain approval from the Facility Manager or Designee to move parts and/or equipment to the Contractor's facility prior to moving any parts and/or equipment.
- 1.20 As per New York State Executive Order 88, the Contractor is required to purchase and replace HVAC equipment with energy efficiency ratios that will be approved by LIRR's Facility Manager or Designee.
- 1.21 All Work shall be performed by skilled technicians in a prompt and workmanlike manner and to the satisfaction of the Facility Manager or Designee. The Contractor's personnel shall be expected to render all necessary repairs in a courteous and professional manner.
- 1.22 LIRR reserves the right to add and delete HVAC equipment throughout the duration of this Contract. The Contractor shall maintain any additional equipment installed during the term of this Contract with a quotation price for maintenance of the additional equipment. If equipment is removed, a corresponding amount consistent with the Contractor's original bid prices shall be deducted from Preventive Maintenance invoices.
- 1.23 While on LIRR Property, all Contractor personnel (including its sub-contractors) are required to and shall sign-in at the start of their work duties and sign-out at the end of their work duties. A logbook for this purpose shall be maintained at the worksite or other LIRR office as determined by the Facility Manager. In case the Contractor or sub-contractor fails to sign-in/out on the logbook, the Contractor shall promptly notify the Facilities Manager or Designee in writing as to why they were unable to sign-in and/or out. If the Contractors' signatures are missing from the logbook and their time at the job site can't be verified to LIRR Facilities Manager or Designee, the associated invoice will not be approved for payment until the Contractor provides proof to the satisfaction of the LIRR Facilities Manager that the Work was performed.

- 1.24 All personnel are required to have proper working attire (Company Uniform) with Company logo displayed. While on LIRR Property, all Contractor personnel are required to visually display LIRR issued Identification badge.
- 1.25 All personnel are required to wear proper Personal Protective Equipment (PPE), including but not limited to safety shoes, safety glasses, hardhat, high-visibility safety vest, gloves.
- 1.26 The Contractor is responsible for being compliant with any changes to applicable Federal, State, and Local license requirements to perform HVAC installations and maintenance. The Contractor is required to notify and submit any new or updated licenses to LIRR's Facility Manager or Designee.
- 1.27 Prior to any hot work or work with the potential to cause a fire, the Contractor must receive a Hot Work Permit from LIRR's Office of the Fire Marshall. The Contractor shall provide fire blankets and the proper fire extinguishers. The Contractor shall provide a fireguard in possession of a Certificate of Fitness issued by NYC FDNY (G60, F60). The fireguard personnel shall be in addition to the torch operator.
- 1.28 Before any maintenance or service is performed on HVAC equipment that interfaces with the fire protection system, the HVAC Contractor must coordinate with LIRR's approved fire protection contractor and LIRR Facility Manager or Designee.
- 1.29 All remedial repair estimates shall be submitted to the LIRR Facility Manager or Designee within five (5) business days of the request being initiated. Replacement/installation proposals shall include, at a minimum, the specifications of any replacement parts, equipment, controls, technician titles, and labor hours.
- 1.30 LIRR Flagmen is required for Work at certain locations due to the proximity of the railway tracks to HVAC units. The Contractor shall notify LIRR's Facility Manager or Designee at least five (5) business days prior to the scheduled Work to arrange for LIRR Flagmen. The Contractor shall not commence Work at such location until LIRR's Facility Manager or Designee confirms Flagmen will be present and they are present at the location.

## **2.0 CONTRACTOR AND TECHNICIAN REQUIREMENTS**

The following outlines the Contractor qualification requirements of this contract:

- 2.1 The Contractor shall submit, with their bid, a company profile with proof of at least 10 years of experience servicing commercial HVAC equipment. Along with proof of experience, the Contractor shall submit a listing of the Contractor's current customers

having HVAC systems comparable in magnitude and complexity to this contract. The LIRR reserves the right to review and contact past and present HVAC customers.

- 2.2 The Contractor shall be authorized and certified by Air Conditioning Contractors of America (ACCA) and the Sheet Metal and Air Conditioning Contractors National Association (SMACNA). Copies of said certifications shall be submitted with Contractor's bid.
- 2.3 The Contractor shall provide an operations manager who is reachable by phone and email during normal business hours. This operations manager must be familiar with this contract. The operations manager must be reachable outside of normal business hours in the event of an emergency.
- 2.4 The Contractor shall directly employ a minimum of ten (10) full time HVAC technicians qualified to work on commercial heating, ventilation, and air conditioning equipment.
  - a) Technicians are required to have at least 10-years of consistent experience in the field of commercial HVAC (references required). Detailed resumes of the technicians shall be submitted with Contractor's bid to demonstrate their experience.
  - b) The Contractor's technicians shall possess an EPA universal refrigerant license and 10-HR OSHA training certificate. Copies of licenses and certifications shall be supplied with Contractor's bid.
  - c) The LIRR reserves the right to review work history and certifications of all technicians in order to verify the minimum requirements are met.
- 2.5 If needed, the Contractor shall be capable of directly contracting the services of a mechanical engineer to design modifications to the HVAC systems. The mechanical engineer must have earned a B.S. degree from an ABET accredited college or university and have a minimum of 3 years of HVAC design experience. The LIRR reserves the right to review work history and credentials of all mechanical engineers in order to verify the minimum requirements are met.
- 2.6 The Contractor is responsible for all training as it relates to its employees' safety and regulatory requirements. Contractor shall maintain records auditable by LIRR at any time, to demonstrate their employees have been trained in accordance with the applicable governmental laws and regulatory requirements.
- 2.7 Prior to any hot work or work with the potential to cause a fire, the Contractor must receive a Hot Work Permit from LIRR's Office of the Fire Marshall. The Contractor shall provide fire blankets and the proper fire extinguishers. The Contractor shall provide a fireguard in possession of a Certificate of Fitness issued by NYC FDNY (G60, F60). The fireguard personnel shall be in addition to the torch operator.

- 2.8 All personnel are required to have proper working attire (Company Uniform) with Company logo displayed and proper Personal Protective Equipment (PPE) (Safety Shoes, Safety Glasses, Helmet, Vest, Gloves, etc.).
- 2.9 During the duration of the Contract, the Contractor is responsible for being compliant with any changes to applicable Federal, State, and Local license requirements to perform HVAC installations and maintenance. The Contractor is required to notify and submit any new or updated licenses to the LIRR.

### **3.0 PREVENTIVE MAINTENANCE**

The Contractor shall schedule and provide Preventive Maintenance ("PM") service, inclusive of all labor, equipment, tools, and consumable materials\* required to perform PM service on all equipment and at the frequencies specified in [Attachment A.2A/A.2B – Equipment List(S)]. \*Consumable materials shall include disposable filters, belts, lubricants, cleaning chemicals, refrigerant, etc. used to perform PM service as described in section 3.1 – PM procedures.

#### **For CLASS A – LIRR Arch St. Facility:**

All PM for Heating and Cooling equipment shall be performed monthly:

- Ten (10) "Standard PM" services per year, and
- Two (2) "Seasonal PM" services (pre-cooling and pre-heating PM) per year.
  - All pre-heating seasonal PM shall be completed before October 31st of each year.
  - All pre-cooling seasonal PM shall be completed before March 31st of each year.

All PM for Exhaust Fans shall be performed on a semi-annual basis:

- Two (2) Seasonal PM services (pre-cooling and pre-heating PM) per year.

#### **For CLASS B – LIRR Signal, Communications, & Substations Department locations:**

All PM for Heating and Cooling equipment shall be performed on a semi-annual basis:

- Two (2) "Seasonal PM" services (pre-cooling and pre-heating PM) per year.
  - All pre-heating seasonal PM shall be completed before October 31st of each year.
  - All pre-cooling seasonal PM shall be completed before March 31st of each year.

All PM for Exhaust Fans shall be performed on a semi-annual basis:

- Two (2) "Seasonal PM" services (pre-cooling and pre-heating PM) per year.

- 3.1 PM procedures and tasks shall be based on the equipment manufacturer's recommendations, standard PM practices recommended by ASHRAE, and in accordance with the following requirements.

#### **a) Standard PM**

Each "Standard PM" service shall include at a minimum and as applicable:

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- Replacement of disposable filters, mark filter(s) with date of replacement (MM/DD/YYYY),
- Inspection of washable filters and clean as needed,
- Inspection of belts,
- Inspection of heating and cooling coils,
- Inspection of pulleys, blower wheels, bearings, dampers, motors, and lubricate as needed,
- Inspection of electrical controls, components, contacts, connections,
- Inspection of drainage lines (during cooling months),
- Removal of dirt and debris in enclosures and drainage pans,
- Inspection of burner operation and heating elements (during heating months),
- Inspection of pilot light/ignition (during heating months),
- Check thermostat for proper settings

**b) Seasonal PM (Semi-annual)**

Each "Seasonal PM" service shall include at a minimum and as applicable:

- 'Standard PM' tasks as described above,
- Start-Up of Heating or Cooling units,
- Thorough chemical\* cleaning of heating and cooling coils,
- Replacement of belts (twice per year), mark belt(s) with replacement date (MM/DD/YYYY),
- Thorough removal of dirt, muck, and debris in enclosures, drainage lines and pans,
- Check system capacity of cooling/heating equipment,
- Check refrigerant charge and fill if necessary (during pre-cooling PM)

\*Cleaning products must be approved by LIRR prior to usage.

- c) Upon request, the Contractor shall be capable of providing LIRR's Facility Manager or Designee with a PM progress report within two (2) business days of the request being initiated. The report shall indicate by Unit ID # which PMs were completed and which are remaining.
- d) The Contractor shall design and prepare a Preventive Maintenance (PM) Checklist, the design of this Checklist shall be coordinated with and approved by LIRR Facility Manager or Designee. This Checklist shall be used for all PM service for each piece of equipment and a copy submitted with the Contractor's invoice. At a minimum, the PM Checklist shall include the following information:

- Equipment location
- Equipment type
- Equipment ID/Unit #
- Equipment manufacturer
- Equipment model and serial number
- Filter and belt type (indicate when belts/filters are changed)
- Date of service
- Name, address, and phone number of Maintenance Company
- Name(s) of technician(s) servicing equipment
- Space for additional comments
- List of parts used (quantity and type)
- Signature(s) of technician(s)
- Preventive Maintenance (PM) number (unique for each PM)
- Description of work performed (PM type - list of tasks/inspections completed)



- Outside air, return air, and supply air temperatures (when applicable)

- e) Upon changing belts or filters, the HVAC Technicians shall legibly record the date (Month/Day/Year) on all new belts and filters.
- f) The assigned HVAC Technicians shall complete a Preventive Maintenance (PM) Checklist for each piece of equipment scheduled for Preventive Maintenance. Each checklist shall have a unique number.
- g) Preventive Maintenance tasks performed on a piece of equipment shall correspond to the type of equipment as detailed in [Attachment A.2A/A.2B – EQUIPMENT LIST(S)].
- h) All PM Work shall be performed between the normal business hours of 8:00AM and 4:00PM\*, Monday through Friday, excluding the LIRR observed holidays listed in Section 5.1 a).  
*\*Unless alternate 8-hour daily timeframe(s) are agreed upon by both LIRR and the Contractor to be defined as 'normal business hours'.*
- i) The cost of all labor, materials and consumables used to accomplish PM services [as specified in section 3.0] shall be included in the scheduled Preventative Maintenance (PM) rates as provided on contract Price Schedule [Attachment A.1A/A.1B – Price Schedule(s)]. LIRR reserves the right to add and/or delete HVAC equipment throughout the duration of this Contract. The Contractor shall maintain any additional equipment installed during the term of this Contract and at rate(s) as quoted and approved by LIRR for the additional equipment. If equipment is removed, a corresponding amount consistent with the Contractor's original bid prices as provided on [Attachment A.2A/A.2B – Equipment List(s)] shall be deducted.

#### **4.0 REMEDIAL SERVICE AND REPAIRS**

The Contractor shall service all HVAC equipment as required. Service to LIRR HVAC equipment includes but is not limited to: corrective and emergency repairs, system modifications, and equipment installation/replacement. The Contractor shall be able to address multiple, simultaneous service calls and have technicians available 24 hours a day, 7 days a week and 365 days a year.

4.1 At a minimum, Remedial Work or "Service Calls" shall include:

- a) Service Calls during normal business hours, excluding LIRR observed holidays.
- b) Emergency Service Calls 24 hours a day, 7 days a week, including holidays.
- c) Equipment installation, replacement, and modifications.
- d) System calibrations, inspections, and troubleshooting.

The Contractor shall provide telephone number(s) for service calls during normal business hours and for emergency service calls during all other hours, weekends, and holidays. The telephone number(s) used must be answered by a representative of the Contractor who has sufficient authority to initiate immediate action to resolve the problem and emergent condition, or by an answering service operator which includes procedures whereby a

representative of the Contractor with authority to initiate immediate action shall call back within thirty (30) minutes after such a call is initiated.

- 4.2 During normal business hours [as defined in Section 5.1 a)], the Contractor shall address all service requests within one (1) hour of the request being initiated.
- 4.3 For all other days and times, outside of normal business hours, the Contractor shall address service request within:
  - a) Four (4) hours of the request being initiated for 'CLASS A'.
  - b) Three (3) hours of the request being initiated for 'CLASS B'.
- 4.4 The Contractor shall repair any deficiencies found during PM inspections, troubleshooting and or tests of the HVAC equipment within 24-hour period of discovery. The Contractor shall inform the LIRR Facilities Manager or Designee and provide a reasonable estimate of the required repair period if parts are not readily available.
- 4.5 If multiple HVAC systems require service/repairs, such service/repairs shall be provided for all systems within the timeframe specified. All repairs or replacements shall be approved and verified by the Facility Manager or Designee.
- 4.6 The Contractor shall inform the LIRR Facilities Manager and or Designee and submit a proposal in accordance with [Section 1.29] for LIRR's Facilities Manager or the Designee's approval of the purchase of any part, material, or equipment above \$500.
- 4.7 The Contractor shall notify LIRR Facilities Manager or Designee of all required repairs on the same day of discovery. All repairs/replacements must be approved and verified by the Facility Manager or Designee. Parts required for exchange shall be noted on the Contractor's invoice.
- 4.8 Notification of brazing or using torch use on LIRR property needs to be approved with LIRR Fire Marshal's prior to repair or install of units. A minimum of three (3) days for scheduled work.
- 4.9 Any part removed from the HVAC equipment must be left at the facility for inspection by LIRR, unless otherwise directed the Facility Manager or Designee. Any requirement to remove any part from the equipment location must be approved by the Facility Manager or Designee.
- 4.10 Each service call/repair shall be reported to the Facilities Assistant Manager/ Manager or Designee for tracking and status report purposes.

- 4.11 Upon arrival at the site, the Contractor shall work continuously and diligently to restore operation to all HVAC equipment that was reported out of service to the Contractors' On-Call Service / Emergency Service.
- 4.12 If for any reason, any HVAC equipment is out of service for more than the usual troubleshooting and repair time of up to four (4) hours, the Contractor shall immediately notify the LIRR Facilities Manager: (i) the time and reason that the HVAC equipment was taken out of service and (ii) when the HVAC equipment is expected to be put back in service for proper and safe operation.
- 4.13 In an emergency, the Contractor shall provide rental heating or cooling equipment (such as spot coolers or heaters) as requested by LIRR. The Contractor shall within the same day of LIRR's request, submit a quote for the rental equipment to the LIRR Facilities Manager or Designee review and approval.
- 4.14 The Technician shall complete a separate work/service ticket for each service call/repair. Each ticket shall have a unique number and, at a minimum, include the following information:
- a) Date and location
  - b) Technician name(s) onsite
  - c) Unit Number/Equipment ID
  - d) Technician arrival and departure times
  - e) Description of work performed, including troubleshooting and resolution
  - f) Parts or materials used
  - g) Technician(s) signature
  - h) LIRR Facility Manager or Designee signature

**All work orders/tickets must be signed by the LIRR Facilities Manager or Designee upon completion of the work.**

- 4.15 The Contractor shall make work tickets available for review on one (1) business day notice upon request by LIRR's Facilities Assistant Manager/ Manager or Designee.
- 4.16 The Contractor shall submit the work order/ticket for LIRR signature within 24-hours of work completion.
- 4.17 The Contractor shall comply with all written citations of the NYC and/or NYS governing authority and all other Government Agencies having jurisdiction, and written recommendations of the Owner's Insurance Carrier or Consultants for repairs as covered herein. The Contractor shall also comply with all applicable local State, N.Y.S. Building Code, National Electric Code and all other applicable National Fire Protection Association requirements.

## **5.0 WORK HOURS/SCHEDULING**

## 5.1 Work Hours

- a) Normal business hours shall be between the hours of 7:00AM to 4:00PM, Monday through Friday (i.e. Regular Time), excluding the following LIRR holidays:
  - New Year's Day
  - Martin Luther King Jr. Day
  - President's Day
  - Good Friday
  - Memorial Day
  - Independence Day
  - Labor Day
  - Columbus Day
  - Election Day
  - Thanksgiving Day
  - Friday after Thanksgiving Day
  - Christmas Day
- b) All Preventive Maintenance (PM) and Service/Repair Work shall be scheduled and performed during normal business hours unless otherwise directed by the LIRR Facility Manager or Designee.
- c) Overtime hours shall be defined as Work performed outside of normal business hours as defined in [Section 5.1 a)] (e.g. nights, weekends, and LIRR holidays).

## 5.2 Work Authorization & Work Tickets

- a) The Contractor's technician on site shall create a Work order/ticket each time PM or remedial Work is performed. Each Work order/ticket shall include, at a minimum:
  - Date and location
  - Equipment identification number(s) of unit serviced,
  - Detailed description of work performed,
  - Name of technician(s) with arrival/departure times,
  - List of materials/Parts used (w/supplier invoices as applicable),
  - Work type/classification category (PM, Service Call, New Install, etc.)

All Work orders/tickets must be signed by the LIRR Facilities Manager or Designee upon completion of the Work.
- b) The Contractor shall obtain approval from LIRR's Facilities Assistant Manager/ Manager or Designee prior to any Work being performed or purchase made in response to a service call.
- c) Once approval has been given, the HVAC Technician shall remain on-site and work continuously to restore the HVAC equipment. Any redirection or stoppage of

Work by the Contractor must be communicated and approved by LIRR's Facilities Manager or Designee.

- d) The Contractor shall obtain approval from the Facility Manager or Designee prior to assigning additional technicians to service calls.
- e) Within 24 hours of service completion, the Contractor shall submit a copy of the Work order/ticket to the LIRR Facilities Manager or Designee via email in PDF format for review and signature.
- f) Service/work tickets signed by the onsite LIRR's Facility Manager or Designee shall be submitted with the Contractor's Monthly Invoice.
- g) The Contractor shall not respond to any request for standby assistance at special events without prior approval of LIRR's Facility Manager or Designee.

## **6.0 INVOICING**

The Contractor shall submit invoices electronically (in PDF format) on a monthly basis. Invoices shall only include completed work for the calendar month being billed.

- 6.1 The Contractor shall submit one invoice inclusive of all Preventive Maintenance (PM) Work performed. The PM Invoice shall include an invoice number, dates of service, LIRR Contract Number, and Purchase Order Number. The invoice shall also include the following support documents:
  - a) All work order/tickets and PM Checklists.
  - b) Equipment Out of Service Report.
- 6.2 The Contractor shall submit one invoice inclusive of all Remedial Service performed. The Remedial Service Invoice shall include an invoice number, Purchase Order Number, LIRR Contract Number, date(s) of service, Unit Number, itemized list of parts, materials, labor, and description of work. The invoice shall also include the following support documents:
  - a) All work order/tickets.
  - b) Material invoice from supplier(s).
- 6.3 The Monthly Invoices shall include a Monthly Summary Report as described in [Section 7.1].
- 6.4 Non-Billable Items :
  - a) The cost for parts, materials, and consumables (i.e. Filters, Belts, lubricants, cleaning products, etc.) used in performing scheduled Preventive Maintenance (PM) service.
  - b) Incomplete, unsatisfactory, or missed Preventive Maintenance (PM) shall be deducted from the monthly invoice according to the Contractor's Price Schedule.

- c) The cost for consumables (i.e. lubricants, cleaning products, etc.) used while performing remedial Work and diagnostic procedures are not billable, this cost is included in the hourly rates for 'Unscheduled/Remedial Repair' in the contract Price Schedule.
- d) Service calls performed in conjunction with Preventive Maintenance service are not billable.
- e) Travel time or expenses related to any travel to and from job sites.
- f) Time spent obtaining parts.
- g) Additional services or HVAC Technicians required due to Contractor's inability to satisfactorily complete Preventive Maintenance.
- h) Tools or equipment purchased by the Contractor for this Contract.
- i) Maintenance or upkeep of the Contractor's tools or equipment.
- j) Unauthorized service, repairs, installations, or replacements.
- k) Unauthorized, unqualified, or unapproved Technicians.
- l) The Contractor shall not be reimbursed for any parts or materials not supported by a manufacturers or supplier's invoice(s), regardless of their value.
- m) Part and/or material cost of \$150.00 or less (excluding Contractor's mark-up) used on a service call are not billable.

#### 6.5 Billable Items:

- a) Labor for service calls, repairs, installations, etc. during normal business hours. Contractor shall obtain prior approval from LIRR Contract Manager before assigning these additional technicians any service tasks.
- b) Labor for service calls, repairs, installs, etc. performed outside of normal business hours.
- c) Any maintenance work required as a result of external factors such as vandalism, accidents, fire or water shall be considered Additional Work and shall be compensated for in accordance with the General Terms and Conditions contained in the Contract. As such, the price(s) submitted for this Contract shall include the cost of all labor, equipment and material and any other costs incidental thereto.
- d) Part, component, equipment, or material cost of \$150.01 or more (excluding Contractor's mark-up) used on a service call or remedial work. The Contractor shall be reimbursed based on at its actual cost plus the mark-up percentage as set forth in the contract Price Schedule, this mark-up shall not exceed ten percent (10.0%) and be held firm for the duration of the contract term. The Contractor shall substantiate its costs by submitting with its invoice, copies of the supplier invoice(s), which shall show all discounts, rebates and the like to which Contractor is entitled.

- e) The Contractor shall only be reimbursed for on-site time that its Technicians are on LIRR property doing legitimate work.
- f) The Contractor shall only be reimbursed for LIRR approved subcontracted work and rental equipment. (see [Section 8.10]).

## **7.0 RECORDS, REPORTS, AND MAINTENANCE MANAGEMENT SYSTEM**

- 7.1 The Contractor shall submit a Monthly Service Summary Report with each monthly invoice package. This report shall be provided in electronic format and submitted via email to the LIRR Facilities Manager for review and approval. This report shall include the following:
  - a) An updated Master Equipment List if any revisions were made during the month.
  - b) List of all completed Preventive Maintenance [Section 3] by equipment and Preventive Maintenance number. Preventive Maintenance Checklists for each unit shall be provided as support.
  - c) All service/repair work [Section 4] completed by the Contractor during the month, including Unit Number, location, names of technicians' onsite, hours worked (sign-in/out times), materials/parts used, and description of work. LIRR signed Service/work tickets for each job shall be provided as support.
- 7.2 The Contractor shall establish and maintain an electronic database of all LIRR HVAC equipment including maintenance and service records. The database shall contain:
  - a) A Master Equipment List with records for each piece of equipment. These records shall include, at a minimum: unit number, equipment type, equipment location, equipment manufacturer, model number, serial number, area served, belt size, filter size, major component information, and preventive maintenance schedule/history.
  - b) All service/repair work performed by the Contractor categorized by unit number, location, work type (service, repairs, modification, installation/replacement, etc.) and by status (new, pending, in progress, completed, invoiced, etc.) The database shall also record the names of technician's onsite, hours worked, materials/parts used, parts invoices, and description of work.
  - c) LIRR reserves the right to add, remove, or revise the information recorded in the database.
- 7.3 The Contractor shall be capable of generating reports based upon the information recorded in the database described in [Section 7.2]. The Contractor shall submit a report to LIRR's Facility Manager or Designee within three (3) business days of a request by LIRR.

- 7.4 All documentation submitted to LIRR, including but not limited to Preventive Maintenance Checklists, Work/Service tickets, proposals and invoices, shall be completed legibly and to the satisfaction of LIRR's Facility Manager or Designee.
- 7.5 Before October 31st of each year, the Contractor shall provide a typed, electronic detailed schedule of all Preventive Maintenance work for all HVAC equipment. E-mail may be utilized to submit the electronic version to the LIRR Facility Manager.

#### **7.6 Incident Reports**

The Contractor shall immediately investigate and provide a detailed written "Incident report" to the LIRR Facilities Manager whenever the Contractor is notified that an incident has occurred on the on LIRR property. This Incident report must be submitted to the LIRR Facilities Manager within 24 hours of the incident and shall include date, time, nature of the incident, person(s) involved in the incident what was investigated, specific tests performed, any malfunctioned parts, any noted defects, any/all corrective action taken and the time the unit was put back in service.

### **8.0 ADDITIONAL REQUIREMENTS**

- 8.1 All Contractor's personnel (including its subcontractors) performing the Work on LIRR property or premises shall attend the LIRR Safety & Roadway Worker Protection Training (see *Attachment C - LIRR Safety & Roadway Worker Protection Training*) prior to coming onto LIRR property.  
This course is held at the LIRR Hillside facility every Wednesday at 3:30 PM and is free of charge to the Contractor. Both these courses must be taken annually and evidence of the Contractor's updated certification ("blue card") must be given to the LIRR Project Manager by August 15th of each subsequent year of the contract. Any relief or substitute personnel must attend these safety courses and provide evidence of certification to the LIRR Facility Manager prior to performing work on LIRR property.
- 8.2 The Contractor shall be solely responsible for verifying all field devices and equipment, field dimensions, field component access, field environment/conditions etc. prior to the installation of any HVAC equipment and or hardware.
- 8.3 The name of the manufacturer shall appear on all major components. All devices, components and equipment shall be U.L. listed.
- 8.4 The Contractor shall not attach their logo or contact information to any equipment.
- 8.5 The Contractor shall be responsible for always maintaining a clean and clear work area. All debris, filters, old parts, components, waste, liquids, hazardous materials, etc. which result from work performed under this contract shall be removed and disposed of by the Contractor in accordance with all applicable laws, EPA regulations, and OSHA standards.



- 8.6 The Contractor shall provide cell phones for all members on their staff to communicate with LIRR staff. The Contractor personnel must respond to all service requests issued by the Facility Manager or Designee.
- 8.7 The Contractor must supply all OSHA approved ladders and lifts as required by the personnel to safely reach HVAC equipment.
- 8.8 The Contractor must submit a certified rigging plan (including either a PE or Master rigger's stamp/certification) for approval by the Facilities Engineer/LIRR Safety Dept. two (2) weeks before any equipment more than 30 lbs. is removed or installed on LIRR property using slings, cranes, or other lifting methods (Only if rigging is used). All rigging plans are subject to approval by LIRR Facilities Engineer/LIRR Safety Dept. prior to the commencement of any Work.
- 8.9 LIRR reserves the right to engage other Contractors or in-house personnel to remedy any preventive maintenance, repair, or service requirement that the Contractor cannot resolve within a reasonable amount of time depending on the priority, complexity, and scope of the work. All work performed by others will be back charged to the Contractor.
- 8.10 All Subcontractors must be approved by LIRR's Facility Manager or Designee and comply with all Contractor requirements specified herein prior to the commencement of any Work on LIRR property. LIRR's Facility Manager or Designee shall have the right to disqualify and ban from LIRR property any or all Subcontractors whose performance is deemed unacceptable and or unprofessional.
- a) If subcontracted Work is approved, the Contractor shall be reimbursed based on at its actual cost plus the mark-up percentage as set forth in the contract Price Schedule, this mark-up shall not exceed ten percent (10.0%) and be held firm for the duration of the contract term. The actual subcontracting cost shall be based upon the lowest of the following: i) the subcontractor's actual charge; ii) the best discount and other considerations available from the subcontractor; iii) most favored customer. The Contractor will not be reimbursed for any subcontract Work which is not substantiated by the Subcontractor's actual invoice from the subcontractor showing all discounts, rebates and any other consideration.
  - b) The Project Manager or his/her authorized designee shall make the sole determination as to the quality of Work, including coordination, being performed by a subcontractor. The Contractor shall be responsible to LIRR for all Work performed by a subcontractor as though it had been performed by Contractor. All disputes with a subcontractor shall be resolved by Contractor and at Contractor's risk and sole expense. All relevant provisions of this Contract shall be flowed down to and apply to each subcontractor.

- c) In addition to Contractor's warranties, Contractor hereby assigns to LIRR all subcontractor warranties provided that, at the request of LIRR, the Contractor shall enforce all subcontractor warranties on behalf of the Authority.
- d) If rental heating or cooling equipment is provided, the Contractor shall be reimbursed based on at its actual cost plus the mark-up percentage as set forth in the contract Price Schedule, this mark-up shall not exceed ten percent (10.0%) and be held firm for the duration of the contract term. The actual cost shall be based upon the lowest of the following: i) the Contractor's actual charge; ii) the best discount and other considerations available from the supplier or subcontractor; iii) most favored customer. The Contractor will not be reimbursed for any rental equipment which is not substantiated by its actual invoice showing all discounts, rebates and any other consideration.

8.11 The Contractor shall have dedicated vehicles to perform the Work.

- a) Vehicles shall have company logo and proper NYS DOT license plates whenever on LIRR property. Unmarked work vans and or trucks are not permitted.
- b) Each vehicle shall be properly equipped to provide Technicians with the proper tools, parts, and equipment to service, maintain, and repair LIRR's equipment.
- c) LIRR shall not pay for any parking tickets or other costs related to parking and/or traffic violations issued to Contractor's vehicles.

8.12 The Contractor shall also maintain at its facility all necessary parts for Preventive Maintenance (e.g. filters and belts) to prevent any delay or postponement of Preventive Maintenance tasks.

8.13 LIRR reserves the right to perform a site visit of each Contractor's facility.

8.14 The Contractor shall be capable of directly contracting the services of a mechanical engineer to design modifications to the HVAC systems. The mechanical engineer must have earned a B.S. degree from an ABET accredited college or university and have a minimum of 3 years of HVAC design experience. LIRR reserves the right to review work history and credentials of all mechanical engineers in order to verify the minimum requirements are met.

## **9.0 HANDLING OF REFRIGERANTS**

9.1 The Contractor, its employees and Subcontractors shall know the requirements of Section 608 of the US Clean Air Act, including Refrigerant Handling Certificate.

9.2 The Contractor must provide the necessary equipment required by law to reclaim and store refrigerants.

- 9.3 The Contractor must ensure that all refrigerants are recovered when repairs, equipment removal or Modifications are being performed.
- 9.4 The Contractor must inform LIRR at least four (4) months in advance of all Proposed Clean Air Act Rules effective dates, if they will have an impact on LIRR operations.
- 9.5 Ensure proper charge of refrigerants where required. Properly repair all refrigerant system leaks and ensure proper charge of refrigerant.

## **10.0 SAFETY AND HEALTH REQUIREMENTS**

### **A. Part I. General Description:**

- a) The Contractor shall be responsible for compliance with the most stringent provisions of the applicable statutes and regulations of the City and State of New York, and the United States, including without limitation, the provisions of the United States Department of Labor-Occupational Safety and Health Administration (OSHA) and the New York State Department of Labor (NYS DOL), are observed and further that the methods of performing the work do not involve undue danger to the personnel employed thereon, the public and public or private property. Should charges of violation of any of the above be issued to the Contractor in the course of work; a copy of each charge and resolution thereof, shall immediately be forwarded to the LIRR Facilities Manager with 24 hours of violation issuance.
- b) Personnel Safety Equipment - For the duration of the Contract and in accordance with OSHA and New York State Labor Law, the Contractor shall take responsibility to ensure that all employees of this project are provided with the necessary personal protective equipment (PPE), including any required personnel traffic safety equipment. Personal protective equipment as required shall include, but not be limited to, face mask, hard hats, safety shoes, gloves, goggles, eye/face shield protection, safety belts, harnesses, respirators, hearing protection, traffic safety vests, etc.
  - i) All Contractor employees walking on or along Agency roadways and toll plazas, and other areas of Agency facilities designated by any of the Agencies during the course of the Contract, shall at all times wear safety equipment designed to provide high visibility under all lighting and weather conditions. The safety equipment shall be worn on all occasions, no matter how brief. Furthermore, the safety equipment shall be worn whenever so directed by the LIRR Facilities Manager and other authorized Agency personnel.
  - ii) The safety equipment shall be for outermost wear and shall consist of fluorescent orange, pink or lime green material and safety reflective material, or equipment with both properties combined. The exact nature of the equipment required (generally safety vests) will be determined solely by the Authority, and may be modified by the Authority during the course of the Contract as it deems fit. All safety equipment provided and worn shall be subject to approval by the Facilities Manager for each respective Agency and other authorized LIRR personnel.

- iii) The Contractor shall have the responsibility for monitoring and enforcing compliance by all Contractor employees with these provisions regarding the wearing of safety equipment. Any Contractor employees not in compliance will be forbidden to work on the LIRR premises.
- iv) All costs of whatever nature associated with providing the safety equipment, including the costs of furnishing, maintaining, repairing and replacing the equipment, shall be included in the Gross Sum Bid of the Bidder's Proposal. No separate rate of measurement and payment will be made for any compliance within this section.
- c) The Contractor shall issue and implement a Safety Plan for this contract. A detailed Safety Plan which addresses the applicable elements from the "Contents of a Typical Safety Plan", as described below shall be submitted to the LIRR Facilities Manager within 30 days of the issuance of the Notice of Award and prior to the start of Work. The approved and accepted Safety Plan, including copies of Material Safety Data Sheets (MSDS), shall be carried by the Contractor for emergency reference.

**B. Part II. CONTENTS OF A TYPICAL SAFETY PLAN**

- a) Policy of the Contractor concerning Safety.
- b) Scope of Safety Policy as it applies to the Project. If a generic plan is submitted, site-specific information must be included. Are there additional needs?
- c) Safety Organization: The Contractor shall designate an individual in their organization who is responsible for Safety and has the background and authority to know what constitutes safe practices and direct their implementation at the site.
- d) Special Provisions for Project Safety and Health Programs, if applicable. Example: scaffolding, trenching, blasting, welding, hoists, cranes, maintenance and protection of traffic, confined space of entry, etc.
- e) Safety and Health Training including the Consultant and/or Contractor's plan for regular scheduled safety meetings and other training to ensure safe practices.
- f) Reporting and Records requirements including posting of emergency numbers and information and liaison with the Authority Facilities Manager, Facility Engineer, and/or General Manager of Facility Operations.
- g) First Aid and Medical Emergencies including equipment available at site and its accessibility for use. Plan for replacement for expended First Aid materials.
- h) Sanitation /Drinking Water.
- i) Personal Protective Equipment including hard hats, safety shoes, harnesses, gloves, goggles, safety belts, etc.
- j) Housekeeping.

- k) Fire Protection and Prevention including providing fire extinguishers at Authority job sites, fire drills, and training.
- l) Electrical Safe Practices including light, temporary circuits, insulated tools, ground fault interruption (GFI), lockout/tag out practices.
- m) Industrial Hygiene including Right-To-Know, MSDS, etc.
- n) Environmental Protection including Consultant and/or Contractor personnel protection, Authority personnel protection, prevention of air, water and solid contamination.
- o) Cold Weather/Hot Weather Safety Practices.
- p) Use of Power Actuated Tools: methods of complying with City Fire Department Regulations by using person holding a Certificate of Fitness.

**C. PART III. ADDITIONAL SAFETY REQUIREMENTS**

- a) The Contractor shall provide copies (minimum of 2) of the Material Safety Data Sheets (MSDS) for each chemical substance introduced at the facility (if any). MSDS must be sent to the LIRR Facilities Manager with the anticipated quantity to be used, method of application, and location of storage. All MSDS shall be submitted and fully approved prior to the start of work involving the particular substances on the Project.
- b) All products and materials used in connection with this Project shall remain asbestos and lead free.
- c) The Contractor shall immediately notify the LIRR Facilities Manager and the LIRR Safety Department if during the course of the project there should be a discovery of any undetermined substances, including suspected asbestos containing materials (ACM), and/or lead containing materials (LCM).
- d) For the duration of the Contract, the Contractor shall adhere to the applicable federal, state, and local laws and regulations for the protection of the environment. If hazardous waste materials are detected or generated at any time, the LIRR Facilities Manager and the LIRR Safety Department shall be immediately notified of each and every occurrence. No Work shall be performed in any area with suspected hazardous materials without the prior authorization of the LIRR Facilities Manager.
- e) In accordance with OSHA and New York State Labor Law, the Contractor shall be responsible for the compliance with applicable laws, codes, rules, regulations and standards with respect to safety and health regulations in accordance with the approved Safety Plan, and that requirements regarding safety and health are being fully implemented. The Contractor shall monitor/provide the Project with the adequate safeguards, including but not limited to the proper shoring, trenching, safe rigging, safety nets, fencing, barricades, scaffolding, and ladders, that are necessary for the protection of its employees, as well as the public and Authority employees. All rigging and scaffolding must be of good sound materials, of adequate dimensions for its intended use, and substantially braced, tied, or secured to

insure absolute safety for those required to use it, as well as those within its vicinity. All riggings, scaffolding, and ladders shall be OSHA approved.

- f) If any emergency condition should develop during the entire Project, the Contractor shall immediately notify the LIRR Facilities Manager of each and every occurrence. The Contractor should also recommend any appropriate courses of action to the LIRR Facilities Manager.
- g) Any review, acceptance, or approval of the Contractor's Safety Plan shall be construed merely to mean that the LIRR is unaware of any reasons at the time to object thereto. Approval by an Agency of the Safety Plan shall not impose any liability upon the LIRR Facilities Manager, and/or the LIRR itself, nor shall any such approval relieve the Contractor of any responsibilities under the Contract.
- h) The Contractor shall provide the maintenance of traffic and the protection of the public from damage to person or property, within the limits of and for the duration of the Contract, through completion. This requirement shall include furnishing, installing, and maintaining temporary construction signs, sign supports, cones, arrow board trailers or arrow panels, truck mounted and other safety equipment, and maintenance of traffic control devices or methods as required per the New York State D.O.T. Manual of Uniform Traffic Control Devices.
- i) All projects with respect to any LIRR buildings shall conform to the New York State Uniform Fire Prevention and Building Code, and respective LIRR obligations under the Americans with Disabilities Act.
- j) Prior to the start of any demolition work, relocation, repairing or re-routing of existing ducts, cables, conduits, raceways, junction boxes, plumbing lines, or roof structures, the Contractor shall notify the LIRR Facilities Manager and the LIRR Safety Department in advance and obtain full clearance of any asbestos containing materials (ACM) and/or lead containing materials (LCM) within this work area. At no time should the Contractor be permitted to perform any work in an area presumed to be of (ACM) and/or (LCM) without the prior authorization of the LIRR Facilities Manager.

**D. PART IV. ACCIDENTS AND PERSONAL INJURIES**

- a) The Contractor shall provide such equipment and facilities as necessary or required in case of accident and/or personal injury, for first aid service to anyone who may be injured during the progress of work, within the limits of and for the duration of the Contract. In addition, the Contractor shall have standing arrangements for the removal and hospital treatment of any person who may be injured or who may become ill.
- b) The Contractor shall report immediately to the LIRR Facilities Manager, any accident and/or personal injury resulting in lost time to employees, vehicle accidents, or any accident resulting in damage to Authority property or the public, and shall furnish in writing, full information including testimony of witnesses regarding any and all, accidents and injuries.

**E. PART V. FIRES ON CONSTRUCTION SITES**

ATTACHMENT A

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Upon observation of a fire at any LIRR site, the Contractor shall immediately notify the appropriate site personnel. This notification shall be made by the fastest possible means. Where a radio transmitting on a LIRR frequency is available, that radio shall be used to contact the appropriate site personnel, using the Facility's name. If a suitable radio is not available, a facility phone, cellular phone or outside phone line shall be used to call the appropriate person(s). This individual shall be advised of all the relevant information, which must include a description of the exact location of the fire. If the fire is located on or adjacent to the roadway, the location description shall include bridge lamppost or tunnel marker number, lane direction and lane number. If hot work is required – A hot work permit must be requested and issued prior to the start of work.

**(End of TSOW)**

## LIRR Arch Street Facility - Equipment List

No.	UNIT ID	AREA SERVICING / UNIT LOCATION	MANUFACTURER	MODEL NUMBER	SERIAL NUMBER	EQUIPMENT TYPE	PM FREQUENCY
1	RTAC 1-1	Shop Floor Administration Offices	CARRIER	48FCEC04A2A3A0A4C0	3723C10324	Heating & Cooling	Monthly
2	RTAC 2-1	Second Floor Lunch Room	CARRIER	48FCDM08A2A6A6W5C0	3723P70769	Heating & Cooling	Monthly
3	RTAC 2-2	Second Floor Training Room	CARRIER	48FCEC04A2A3A0A4C0	3723C10323	Heating & Cooling	Monthly
4	RTAC 3-1	First, Second, Third Floor Perimeter Offices	CARRIER	48FCFB06A3E6A6W2C0	3224C08995	Heating & Cooling	Monthly
5	RTAC 3-2	Third Floor Interior Offices	CARRIER	48VL-K2404030	3724F49452	Heating & Cooling	Monthly
6	RTAC 3-3	Second / Third Floor Corridor & Locker Rooms	CARRIER	48FCDN08A2A6A6W2C0	2024P73988	Heating & Cooling	Monthly
7	RTAC 3-4	Third Floor Comm & Signal Offices	CARRIER	48VL-K2404030	3424F47748	Heating & Cooling	Monthly
8	RTAC 1M	North Side Corridor & Locker Rooms	CARRIER	48FCFB05A2E6A6W2C0	3224C08994	Heating & Cooling	Monthly
9	RTAC 2M	North Side Second Floor Lunch Room & Offices	CARRIER	48GCEH04A2A3A0A1C0	2324C08989	Heating & Cooling	Monthly
10	AHU 1-1	Shop Floor Supervisors Office	CARRIER	PHK18FK		Heating & Cooling	Monthly
11	AHU 3-1	Third Floor Comm Room	TRANE	PHK18FK		Heating & Cooling	Monthly
12	EF - 1	MoE Shop Wall-mounted	COOK	60XMPH		Heating & Cooling	Monthly
13	EF - 2	MoE Shop Wall-mounted	COOK	60XMPH		Heating & Cooling	Monthly
14	EF - 3	MoE Shop Wall-mounted	COOK	60XMPH		Heating & Cooling	Monthly
15	EF - 4	MoE Shop Wall-mounted	COOK	60XMPH		Heating & Cooling	Monthly
16	EF - 5	MoE Shop Wall-mounted	COOK	60XMPH		Heating & Cooling	Monthly
17	EF - 6	MoE Shop Roof - North Side	COOK	33CR9B		Exhaust Fan	Semi-annual
18	EF - 7	MoE Shop Roof - North Side	COOK	33CR9B		Exhaust Fan	Semi-annual
19	EF - 8	MoE Shop Roof - North Side	COOK	33CR9B		Exhaust Fan	Semi-annual
20	EF - 9	MoE Shop Roof - North Side	COOK	33CR9B		Exhaust Fan	Semi-annual
21	EF - 10	MoE Shop Roof - South Side	COOK	300R9B		Exhaust Fan	Semi-annual
22	EF - 11	MoE Shop Roof - South Side	COOK	300R9B		Exhaust Fan	Semi-annual
23	EF - 16	Shop Floor Material Storage	COOK	12A17D		Exhaust Fan	Semi-annual
24	EF - 17	Shop Floor Oil Storage	COOK	100SQN12D		Exhaust Fan	Semi-annual
25	EF - 18	Shop Mechanical Room	COOK	20XMP		Exhaust Fan	Semi-annual
26	EF - 20	Shop Floor Compressor Room	COOK	30XMPH		Exhaust Fan	Semi-annual
27	EF - 21	Shop Floor Electrical Room	COOK	12SP15D		Exhaust Fan	Semi-annual
28	EF - 31	Ground Level EMR	COOK	12SP15D		Exhaust Fan	Semi-annual
29	EF - 22	Location: Roof - South Side	Dayton	4YU94		Exhaust Fan	Semi-annual
30	EF - 23	Location: Roof - South Side	Dayton	4YU94		Exhaust Fan	Semi-annual
31	EF - 24	Location: Roof - South Side	Dayton	4YU94		Exhaust Fan	Semi-annual
32	EF - 25	Location: Roof - South Side	Dayton	4YU94		Exhaust Fan	Semi-annual
33	EF - 26	Location: Roof - South Side	Dayton	4YU94		Exhaust Fan	Semi-annual
34	EF - 27	Location: Roof - South Side	Dayton	4YU94		Exhaust Fan	Semi-annual
35	EF - 28	Location: Roof - South Side	Dayton	4YU94		Exhaust Fan	Semi-annual
36	EF - 29	Location: Roof - South Side	Dayton	4YU94		Exhaust Fan	Semi-annual
37	EF - 30	Location: Roof - South Side	Dayton	4YU94		Exhaust Fan	Semi-annual
38	EF - 32	Location: Roof - North Side	COOK	60 ACE 600		Exhaust Fan	Semi-annual
39	EF - 33	Location: Roof - North Side	COOK	60 ACE 600		Exhaust Fan	Semi-annual
40	EF - 34	Location: Roof - North Side	COOK	60 ACE 600		Exhaust Fan	Semi-annual
41	EF - 39	Location: Roof - South Side	Dayton	4YU94		Exhaust Fan	Semi-annual
42	AC - T1	Arch St. - TRAILER - Plumbing	BARD	W30A2-A15	298K183581263-02	Heating & Cooling	Monthly
43	AC - T2	Lumber Yard - TRAILER	BARD	W36AB-A10	278N224028534-02	Heating & Cooling	Monthly
44	AC - T3	Lumber Yard - TRAILER	BARD	W36AB-A10	278N224028515-02	Heating & Cooling	Monthly
45	AC - T4	Lumber Yard - TRAILER	BARD	WA372-A10	238G091792047-01	Heating & Cooling	Monthly
46	AC - T5	Lumber Yard - TRAILER	BARD	W30AB-A10	227J234114076-02	Heating & Cooling	Monthly
47	AC - T6	Lumber Yard - TRAILER	BARD	W30AB-A10	125D99L33529-01	Heating & Cooling	Monthly
48	AC-MD-1	Mid Day Storage Yard	Fujitsu	AOU24RLXFZ/TBD	LUN164750/TBD	Heating & Cooling	Monthly
49	AC-MD-2	Mid Day Storage Yard	BARD	TBD	TBD	Heating & Cooling	Monthly
50	AC-MD-3	Mid Day Storage Yard	BARD	TBD	TBD	Heating & Cooling	Monthly

## ATTACHMENT A.2B

### Equipment List for 'CLASS B' LIRR Signal, Communications, & Substations (Power) Departments

#### SIGNAL DEPARTMENT - EQUIPMENT LIST

No.	Equipment Location	Manufacturer	Model	Serial	Equipment Type	PM Frequency
1	AMITYVILLE	Bard		153B082463416-02	Heating & Cooling	Semi-annual (Seasonal PM)
2	AMITYVILLE	Bard	Unknown	139B082461466-02	Heating & Cooling	Semi-annual (Seasonal PM)
3	AMITYVILLE	Bard	Unknown	139B0824161464-02	Heating & Cooling	Semi-annual (Seasonal PM)
4	AMITYVILLE	Bard	Unable to obtain	139B0824161470	Heating & Cooling	Semi-annual (Seasonal PM)
5	AMITYVILLE	Bard	Unknown	139B082461470-02	Heating & Cooling	Semi-annual (Seasonal PM)
6	ATLANTIC	Bard Manufacturing	UNKNOWN	289H203780548-02	Heating & Cooling	Semi-annual (Seasonal PM)
7	FLATBUSH	Trane	UNKNOWN	A98K03092	Heating & Cooling	Semi-annual (Seasonal PM)
8	Central islip	Bard	UNKNOWN	324P163392490-02	Heating & Cooling	Semi-annual (Seasonal PM)
9	WYANDANCH	Bard	Unknown	324H173446772-02	Heating & Cooling	Semi-annual (Seasonal PM)
10	HICKSVILLE	Bard		S#289P2038276484-02	Heating & Cooling	Semi-annual (Seasonal PM)
11	HICKSVILLE	Bard	MC4002	P213923657	Heating & Cooling	Semi-annual (Seasonal PM)
12	HICKSVILLE	Freidrich	PDH09K35GA	AFDP00193	Heating & Cooling	Semi-annual (Seasonal PM)
13	HICKSVILLE	Freidrich		AFDP00197	Heating & Cooling	Semi-annual (Seasonal PM)
14	NORTHPORT	BARD	WA242	140H021739626-02	Heating & Cooling	Semi-annual (Seasonal PM)
15	NORTHPORT	BARD	WA242	140H021739625-02	Heating & Cooling	Semi-annual (Seasonal PM)
16	Signal Dunton	Fujitsu - Split Duct Unit	36000BTU Mini Split	Unknown	Heating & Cooling	Semi-annual (Seasonal PM)
17	Jamaica West of Dunton tower	Friedrich	MR36Y3J	805KAPB00192	Heating & Cooling	Semi-annual (Seasonal PM)
18	ENY	Coleman	March 48203-066	Unknown	Heating & Cooling	Semi-annual (Seasonal PM)
19	FARMINGDALE	Unknown	Unknown	324N163387332-02	Heating & Cooling	Semi-annual (Seasonal PM)
20	KINGS PARK	BARD	WA242	140J021743595-02	Heating & Cooling	Semi-annual (Seasonal PM)
21	KINGS PARK	BARD	WA242	140J021743594-02	Heating & Cooling	Semi-annual (Seasonal PM)
22	Jamaica, East of Hall tower (2nd)	Bard Manufacturing	WA372-A10XX4XXJ	225K031842742-02	Heating & Cooling	Semi-annual (Seasonal PM)
23	Jamaica, East of Hall tower (1st)	Bard Manufacturing	WA372-A10XX4XXJ	225K031842746-02	Heating & Cooling	Semi-annual (Seasonal PM)
24	Jamaica, west of Hall tower (1st)	Bard Manufacturing	WA372-A10XX4XXJ	225K031842747-02	Heating & Cooling	Semi-annual (Seasonal PM)
25	Jamaica, west of Hall tower (1st)	Bard Manufacturing	WA372-A10XX4XXJ	225K031842744-02	Heating & Cooling	Semi-annual (Seasonal PM)
26	Jamaica, East of Hall tower (West)	Friedrich	M36YJ	Unknown	Heating & Cooling	Semi-annual (Seasonal PM)
27	Jamaica, East of Hall tower (East)	Friedrich	M36YJ		Heating & Cooling	Semi-annual (Seasonal PM)
28	FOREMAN TRAILER	Bard	W30A1-A10	298K112833423-02	Heating & Cooling	Semi-annual (Seasonal PM)
29	MAINTAINERS TRAILER 1 (East)	Bard	W30A1-A10	298K112833432-02	Heating & Cooling	Semi-annual (Seasonal PM)
30	MAINTAINERS TRAILER 2	Bard	W30A1-A10	255K052082614-02	Heating & Cooling	Semi-annual (Seasonal PM)
31	30	Bard	W60L1-A10XX4XXJ	324J112820448-02	Heating & Cooling	Semi-annual (Seasonal PM)
32	30	Bard	W60L1-A10XX4XXJ	324J112820581-02	Heating & Cooling	Semi-annual (Seasonal PM)
33	LIC	Bard	W60L2-A10XX4XXJ	324K133050379-2	Heating & Cooling	Semi-annual (Seasonal PM)
34	LIC	Bard	W60L2-A10XX4XXJ	324K133050378-2	Heating & Cooling	Semi-annual (Seasonal PM)
35	LIC	Bard	W60L2-A10XX4XX	324N133074050-02	Heating & Cooling	Semi-annual (Seasonal PM)
36	LIC	Bard	W60L2-A10XX4XX	324L122954651-02	Heating & Cooling	Semi-annual (Seasonal PM)
37	LIC	Bard	W60L2-A10XX4XX	324F133020688-02	Heating & Cooling	Semi-annual (Seasonal PM)
38	LIC	Bard	W60L2-A10XX4XX	324F133020689-02	Heating & Cooling	Semi-annual (Seasonal PM)
39	LIC	Bard	UNKNOWN	324F112807344-02	Heating & Cooling	Semi-annual (Seasonal PM)
40	LIC	Bard	UNKNOWN	324F112807343-02	Heating & Cooling	Semi-annual (Seasonal PM)
41	LIC	Bard	UNKNOWN	324L122954683-02	Heating & Cooling	Semi-annual (Seasonal PM)
42	LIC	Bard	UNKNOWN	324L122954682-02	Heating & Cooling	Semi-annual (Seasonal PM)
43	LIC	Bard	W60L1-A10XX4XXJ	324C132999497-02	Heating & Cooling	Semi-annual (Seasonal PM)
44	LIC	Bard	W60L1-A10XX4XXJ	324C132999496-02	Heating & Cooling	Semi-annual (Seasonal PM)
45	1/2 mile east of Hollis station	Bard Manufacturing	WA302A05XX4XXJ	255N021772288-02	Heating & Cooling	Semi-annual (Seasonal PM)
46	1/2 mile east of Hollis station	Bard Manufacturing	B61-831 J30AB-A00XPXXJ	D234073171	Heating & Cooling	Semi-annual (Seasonal PM)
47	HUNTINGTON	FREIDRICH	MXQ08J10-A	LBDR17702	Heating & Cooling	Semi-annual (Seasonal PM)
48	Jamaica, west of Jay tower (2nd)	Bard Manufacturing	WA6A2-A08SXXXX	309L183592039-02	Heating & Cooling	Semi-annual (Seasonal PM)
49	Jamaica, west of Jay tower (1st)	Bard Manufacturing	WA372-A10XX4XXJ	225K031842745-02	Heating & Cooling	Semi-annual (Seasonal PM)
50	Jamaica, west of Jay tower (2nd)	Bard Manufacturing	WA372-A10XX4XXJ	225K031842748-02	Heating & Cooling	Semi-annual (Seasonal PM)
51	Jamaica, west of Jay tower (1st)	Bard Manufacturing	WA372-A10XX4XXJ	225K031842743-02	Heating & Cooling	Semi-annual (Seasonal PM)
52	Jamaica, West of Jay tower	Bard Manufacturing	WA372-A10XX4XXJ	Unknown	Heating & Cooling	Semi-annual (Seasonal PM)
53	Jamaica, West of Hall tower	Bard Manufacturing	UNKNOWN	20018243-30-A	Heating & Cooling	Semi-annual (Seasonal PM)
54	DEER PARK	Bard	Unknown	324F173437524-02	Heating & Cooling	Semi-annual (Seasonal PM)
55	KO	Bard	W60AC-A10XX4XXJ	289M203806748-02	Heating & Cooling	Semi-annual (Seasonal PM)
56	KO	Bard	W60AC-A10XX4XXJ	289M203806747-02	Heating & Cooling	Semi-annual (Seasonal PM)

57	FARMINGDALE	Bard	Unknown	324F173437523-02	Heating & Cooling	Semi-annual (Seasonal PM)
58	Island Park	Bard	W60L2-A10XX4XXJ	324P163392488-02	Heating & Cooling	Semi-annual (Seasonal PM)
59	LITTLE NECK	Bard	WA182-A05XX4XXJ	139L662550286-02	Heating & Cooling	Semi-annual (Seasonal PM)
60	Long Beach Yard	Bard	W30AA-B09BPSX3J	347M163373177-02	Heating & Cooling	Semi-annual (Seasonal PM)
61	MASSAPEQUA	Bard	W60L2-A10XX4XXJ	324P153291657-02	Heating & Cooling	Semi-annual (Seasonal PM)
62	NEW HYDE PARK	Bard	W60L2-A10XX4XXJ	289M19370447302	Heating & Cooling	Semi-annual (Seasonal PM)
63	MINEOLA	Bard	W60L2-A10XX4XXJ	29N213922016-02	Heating & Cooling	Semi-annual (Seasonal PM)
64	CARLE PLACE	Bard	UNKNOWN	289C203746140-02	Heating & Cooling	Semi-annual (Seasonal PM)
65	CARLE PLACE	Bard	UNKNOWN	289C203745658-02	Heating & Cooling	Semi-annual (Seasonal PM)
66	FREEPORT	TRANE	PTCH1501GCA	A01G01474	Heating & Cooling	Semi-annual (Seasonal PM)
67	FREEPORT	TRANE	PTHC1501GDA	A02E0122	Heating & Cooling	Semi-annual (Seasonal PM)
68	Ronkonkoma	Bard	UNKNOWN	324P163392489-02	Heating & Cooling	Semi-annual (Seasonal PM)
69	FREEPORT	FREIDRICH	SQ10N10-A	ACGYO0716	Heating & Cooling	Semi-annual (Seasonal PM)
70	Located between east of Floral	Bard	W60L1-A10XX4XXJ	289A213832230-02	Heating & Cooling	Semi-annual (Seasonal PM)
71	1/2 mile east of Floral Park Sta	Bard	W60L1-A10XX4XXJ	289B213841951-02	Heating & Cooling	Semi-annual (Seasonal PM)
72	Located 3/4 mile east of Floral	Bard	W60L1-A10XX4XXJ	289C234067331-02	Heating & Cooling	Semi-annual (Seasonal PM)
73	DEER PARK	Bard	W60L1-A10XX4XXJ		Heating & Cooling	Semi-annual (Seasonal PM)
74	BAYSHORE	Bard	W60L1-A10XX4XXJ	324H173446771-02	Heating & Cooling	Semi-annual (Seasonal PM)
75	HUNTERSPPOINT	Bard	W60L1-A10XX4XXJ	324M10275114-02	Heating & Cooling	Semi-annual (Seasonal PM)
76	HUNTERSPPOINT	Bard	W60L1-A10XX4XXJ	324M10275113-02	Heating & Cooling	Semi-annual (Seasonal PM)
77	Ronkonkoma	Bard	W60L1-A10XX4XXJ	324H173446773-02	Heating & Cooling	Semi-annual (Seasonal PM)
78	FREEPORT	FEDDERS	A3J12E2AG	BH6792430386	Heating & Cooling	Semi-annual (Seasonal PM)
79	FARMINGDALE	Unknown	B18-206 EHWA05-A10LB	L234141253	Heating & Cooling	Semi-annual (Seasonal PM)
80	ACROSS FROM QUEENS TOWNE	Bard Manufacturing	Unknown	349N193713182-02	Heating & Cooling	Semi-annual (Seasonal PM)
81	West side of Cross Island Pkwy	Bard Manufacturing	WA423A10XX4XXJ	253N021773410-02	Heating & Cooling	Semi-annual (Seasonal PM)
82	Adjacent to existing Bellerose	Bard Manufacturing	Unknown	253N021773411	Heating & Cooling	Semi-annual (Seasonal PM)
83	Hampton Bays	Bard	W60L2-A10XX4XXJ	324P143190383-02	Heating & Cooling	Semi-annual (Seasonal PM)
84	South Hampton	Bard	W60L2-A10XX4XXJ	324F153236130-02	Heating & Cooling	Semi-annual (Seasonal PM)
85	Speonk	J-Controls	W36AY-A05XXXXXJ	L244246543	Heating & Cooling	Semi-annual (Seasonal PM)
86	Speonk	Bard	W36AY-A05XXXXXJ	278L244246543-02	Heating & Cooling	Semi-annual (Seasonal PM)
87	Located West Valley Stream St	Bard Manufacturing	WA372-10XX4XXJ	225B041889498-02	Heating & Cooling	Semi-annual (Seasonal PM)
88	Located east side of Valley To	Bard Manufacturing	WA372	illegible	Heating & Cooling	Semi-annual (Seasonal PM)
89	Located east side of Valley To	Bard Manufacturing	WA372	illegible	Heating & Cooling	Semi-annual (Seasonal PM)
90	ATLANTIC	Bard Manufacturing	UNKNOWN	324N163382463-02	Heating & Cooling	Semi-annual (Seasonal PM)
91	WANTAGH	Bard	Unable to obtain	139B082461469-02	Heating & Cooling	Semi-annual (Seasonal PM)
92	WANTAGH	Bard	Unknown	139B082461467-02	Heating & Cooling	Semi-annual (Seasonal PM)
93	WANTAGH	Bard	Unknown	139B082461467-02	Heating & Cooling	Semi-annual (Seasonal PM)
94	WANTAGH	Bard	Unknown	153B082463417-02	Heating & Cooling	Semi-annual (Seasonal PM)
95	WANTAGH	Bard	Unknown	139B82461463-02	Heating & Cooling	Semi-annual (Seasonal PM)
96	Located west of West Hempst	Bard Manufacturing	HVE Series	n/a	Heating & Cooling	Semi-annual (Seasonal PM)
97	WOODSIDE	Fujitsu - Split Duct Unit	9397113106-01/938708142	Unknown	Heating & Cooling	Semi-annual (Seasonal PM)
98	WOODSIDE	Bard	WH602-A10EXXXX0	153L072409915-02	Heating	Semi-annual (Seasonal PM)
99	WOODSIDE	Fujitsu - Split Duct Unit	9397113106-01/938708142	Unknown	Heating & Cooling	Semi-annual (Seasonal PM)
100	WOODSIDE	Bard	WH184-A08EXXXX0	257L072409805-02	Heating	Semi-annual (Seasonal PM)

## COMMUNICATIONS DEPARTMENT - EQUIPMENT LIST

No.	Location	Address	MFR	Model	Serial #	Equipment Type	PM Frequency
1	Auburndale	192nd St & Station Rd Flushing NY 11358	Bard	W24A2-A04XXXXXJ	314J183574502-02	Heating & Cooling	Semi-annual (Seasonal PM)
2	Babylon Radio	70 Foxglove Rd, West Islip NY 11795	Eubank	EAA2060AA050N++1+1DA+C21++	2206-F199852-0-8	Heating & Cooling	Semi-annual (Seasonal PM)
3	Babylon Radio	70 Foxglove Rd, West Islip NY 11795	Daikin	RKS30LVJU	E001930	Heating & Cooling	Semi-annual (Seasonal PM)
4	CR-129	39 Skillman Ave Long Island City NY 11101	Bard	W60AC-B0ZZPXXX	292L203804158-02	Heating & Cooling	Semi-annual (Seasonal PM)
5	East New York	Atlantic Ave & Van Sinderen Ave Brooklyn NY 112	Mitsubishi	PUZA36NBA7	13U18229B	Heating & Cooling	Semi-annual (Seasonal PM)
6	Elmont Station	Belmont Park Rd & Green Rd Floral Park NY 1100	Mitsubishi	PKA-A12HA7	OZA27202A	Heating & Cooling	Semi-annual (Seasonal PM)
7	Far Rockaway	Brunswick Ave & Nameoke Ave Far Rockaway NY	Bard	WA241-A05	140D001455534-02	Heating & Cooling	Semi-annual (Seasonal PM)
8	Garden City	Franklin Ave & 6th Street Garden City NY 11530	Bard	WA242-A00XXXXXG	140J011662253-02	Heating & Cooling	Semi-annual (Seasonal PM)
9	Harold CH	39 Skillman Ave Long Island City NY 11101	Marvair	AVPA24ACA040N-A5-100	DF-F143802-0-1	Heating & Cooling	Semi-annual (Seasonal PM)
10	Hicksville	61 Broadway, Hicksville NY 11801	Marvair	MAA1060AA050C++E+1DA+A21++	2107-F181051-0-1	Heating & Cooling	Semi-annual (Seasonal PM)
11	Hunterspoint	Skillman Ave & 49th Ave Long Island City NY 1110	Bard	WH242-A00MWXXXS	140D031806570-02	Heating & Cooling	Semi-annual (Seasonal PM)
12	Huntington CH	New York Ave & Broadway Huntington Station NY	Eubank	EAA2060AA050N++1+1DA+C21++	2206-F199852-0-3	Heating & Cooling	Semi-annual (Seasonal PM)
13	Huntington Radio 1	30 Railroad St Huntington Station NY 11746	Bard	W24H1-A04MWXXXE	314F122903738-02	Heating & Cooling	Semi-annual (Seasonal PM)
14	Huntington Radio 2	30 Railroad St Huntington Station NY 11746	Bard	W24H1-A04MWXXXE	314F122903737-02	Heating & Cooling	Semi-annual (Seasonal PM)
15	Island Park	Station Plaza & Long Beach Rd Island Park NY 115	Bard	W36A2-A05XPXXXJ	J163342108	Heating & Cooling	Semi-annual (Seasonal PM)
16	Jamaica	144-41 Sutphin Blvd Queens NY 11435	Bard	WL241-A05EPXXXJ	140B001434178-02	Heating & Cooling	Semi-annual (Seasonal PM)
17	Kings Park	NY-25A & Indian Head Rd Kings Park NY 11754	Bard	W24A2-A04XXXXXJ	314K183585533-02	Heating & Cooling	Semi-annual (Seasonal PM)
18	Little Neck Radio 1	Old Cutter Mill Ln & Water Mill Ln Great Neck NY	Bard	W24H1-A04MWXXXE	314H112814702-02	Heating & Cooling	Semi-annual (Seasonal PM)
19	Little Neck Radio 2	Old Cutter Mill Ln & Water Mill Ln Great Neck NY	Bard	W24H1-A04MWXXXE	314H112814700-02	Heating & Cooling	Semi-annual (Seasonal PM)
20	Long Beach 1	Rev JJ Evans Blvd & W Park Ave Long Beach NY 11	Bard	W24H2-A00MWXXXX	314B163306778-02	Heating & Cooling	Semi-annual (Seasonal PM)
21	Long Beach 2	Rev JJ Evans Blvd & W Park Ave Long Beach NY 11	Bard	W24H2-A00MWXXXX	314B163306777-02	Heating & Cooling	Semi-annual (Seasonal PM)
22	Lynbrook	Stauderman Ave & Atlantic Ave Lynbrook NY 115	Eubank	EAA2060AA050N++1+1DA+C21++	2206-F199852-0-5	Heating & Cooling	Semi-annual (Seasonal PM)
23	Lynbrook	Stauderman Ave & Atlantic Ave Lynbrook NY 115	Daikin	3 Ton Mini Split	N/A	Heating & Cooling	Semi-annual (Seasonal PM)
24	Mastic CH 1	William Floyd Pkwy & Northern Blvd Shirely NY 11	Bard	W60AC-A05XXXXXJ	289L224006088-02	Heating & Cooling	Semi-annual (Seasonal PM)
25	Mastic CH 2	William Floyd Pkwy & Northern Blvd Shirely NY 11	Bard	W60AC-A05XXXXXJ	289M224009705-02	Heating & Cooling	Semi-annual (Seasonal PM)
26	Mineola	Hinck Way & Roslyn Road Mineola NY 11501	Bard	W55AC-B06BPXXXJ	450L203804800-02	Heating & Cooling	Semi-annual (Seasonal PM)
27	Montauk	Flamingo Ave & Ft Pond Rd Montauk New York 11	Eubank	EAA2060AA050N++1	2206-F199852-0-7	Heating & Cooling	Semi-annual (Seasonal PM)
28	Nostrand	Atlantic Ave & Nostrand Ave Brooklyn NY 11216	Bard	W24A1-B06XWXXXJ	315M112852224-02	Heating & Cooling	Semi-annual (Seasonal PM)
29	Patchogue	South Ocean Ave & Baker St Patchogue New York	Eubank	EAA2060AA050N++1+1DA+C21++	2206-F199852-0-2	Heating & Cooling	Semi-annual (Seasonal PM)
30	Port Jefferson	Highlands Blvd & Columbia St Port Jefferson NY 1	Eubank	EAA2060AC060N++1+1DA+C21++	2206-F199853-0-1	Heating & Cooling	Semi-annual (Seasonal PM)
31	Port Jefferson	Highlands Blvd & Columbia St Port Jefferson NY 1	Bard	WA361-B06XP5XXJ	133K001519018-02	Heating & Cooling	Semi-annual (Seasonal PM)
32	Port Washington	Vanderventer Ave & S Bayles Ave Port Washingto	Bard	AVPA24ACA050NU-A2-100	DC-F132082-0-4	Heating & Cooling	Semi-annual (Seasonal PM)
33	Queens	Jamaica Ave & 220th St Queens Village NY 11428	Bard	W48AC-A05	332L203800053-02	Heating & Cooling	Semi-annual (Seasonal PM)
34	Riverhead	Railroad Ave & Osborn Ave Riverhead NY 11901	Eubank	EAA2060AA050N++1_1DA_C21++	2206-F199852-0-4	Heating & Cooling	Semi-annual (Seasonal PM)
35	Roslyn	Lincoln Ave & Warner Ave Roslyn Heights NY 115	Eubank	7AA2048AA050N++E+1CA+A21++	2106-F180599-0-1	Heating & Cooling	Semi-annual (Seasonal PM)
36	South Hampton	Railroad Plaza & N Main St Southampton NY 1196	Eubank	EAA2060AC060N++1+1DA+C21++	2206-F199853-0-1	Heating & Cooling	Semi-annual (Seasonal PM)
37	South Hampton	Railroad Plaza & N Main St Southampton NY 1196	Bard	WA361-B06XP5XXJ	133L001528771-01	Heating & Cooling	Semi-annual (Seasonal PM)
38	Speonk	N Phillips Ave & Depot Rd Eastport NY 11941	Bard	W24AY-A05	434N234157401-02	Heating & Cooling	Semi-annual (Seasonal PM)
39	West Hampton	Station Rd & Depot Rd Westhampton New York 11	Eubank	EAA2060AA050N++1+1DA+C21++	2206-F199852-0-1	Heating & Cooling	Semi-annual (Seasonal PM)
40	West Hempstead	88 Hempstead Ave Hempstead NY 11550	Bard	WA241-A05	140D001455531-02	Heating & Cooling	Semi-annual (Seasonal PM)
41	Winfield	73rd Pl & 51st Ave Elmhurst NY 11373	Bard	W60A2-B09XXXXXJ	325J183567861-02	Heating & Cooling	Semi-annual (Seasonal PM)
42	Woodbury	500 Sunnyside Blvd Woodbury NY 11797	Bard	W24A2-A00XXXXXJ	314N163383784-02	Heating & Cooling	Semi-annual (Seasonal PM)



## SUBSTATIONS (POWER) DEPARTMENT - EQUIPMENT LIST

No	Description	Manufacturer	Model	Serial Number	Equipment Type	PM Frequency
1	FLATBUSH SUBSTATION 38 KV BUILDING	BARD MANUFACTURING CORP	THE WALL MOUNT	344J153256545-02	HEATING & COOLING	Semi-annual (Seasonal PM)
2	FLATBUSH SUBSTATION 38 KV BUILDING	BARD MANUFACTURING CORP	THE WALL MOUNT	315J153258045-02	HEATING & COOLING	Semi-annual (Seasonal PM)
3	FLATBUSH SUBSTATION 38 KV BUILDING	BARD MANUFACTURING CORP	THE WALL MOUNT	344J153256544-02	HEATING & COOLING	Semi-annual (Seasonal PM)
4	FLATBUSH SUBSTATION 38 KV BUILDING	BARD MANUFACTURING CORP	THE WALL MOUNT	314J153253706-02	HEATING & COOLING	Semi-annual (Seasonal PM)
5	FLATBUSH SUBSTATION 38 KV BUILDING	BARD MANUFACTURING CORP	THE WALL MOUNT	406L153267508-01	HEATING & COOLING	Semi-annual (Seasonal PM)
6	FLATBUSH SUBSTATION 5 KV BUILDING	FUJITSU	AOU24RLX	CTN008402	HEATING & COOLING	Semi-annual (Seasonal PM)
7	FLATBUSH SUBSTATION 5 KV BUILDING	FUJITSU	ABU24RULX	CUA003789	HEATING & COOLING	Semi-annual (Seasonal PM)
8	FLATBUSH SUBSTATION 5 KV BUILDING	FUJITSU	AOU24RLX	CTN008427	HEATING & COOLING	Semi-annual (Seasonal PM)
9	FLATBUSH SUBSTATION 5 KV BUILDING	FUJITSU	ABU24RULX	CUA003748	HEATING & COOLING	Semi-annual (Seasonal PM)
10	FLATBUSH SUBSTATION DC BUILDING	BARD MANUFACTURING CORP	W70A2-C09XXXXXJ	405L153269642-02	HEATING & COOLING	Semi-annual (Seasonal PM)
11	FLATBUSH SUBSTATION DC BUILDING	BARD MANUFACTURING CORP	W70A2-C09XXXXXJ	405L153269643-02	HEATING & COOLING	Semi-annual (Seasonal PM)
12	FLATBUSH SUBSTATION DC BUILDING	BARD MANUFACTURING CORP	W70A2-C09XXXXXJ	405L153269644-02	HEATING & COOLING	Semi-annual (Seasonal PM)
13	FLATBUSH SUBSTATION DC BUILDING	BARD MANUFACTURING CORP	W70A2-C09XXXXXJ	405L153269645-02	HEATING & COOLING	Semi-annual (Seasonal PM)
14	FLATBUSH SUBSTATION 480V FACILITY	BARD MANUFACTURING CORP	THE WALL MOUNT	401K163356557-02	HEATING & COOLING	Semi-annual (Seasonal PM)
15	FLATBUSH SUBSTATION 480V FACILITY	GREENHECK	E2-30-615-B20	5079505	EXHAUST FAN	Semi-annual (Seasonal PM)
16	FLATBUSH SUBSTATION 480V FACILITY	YASAKAWA	CIMR-ZU2A0011FAA	1W1771570130002	HEATING & COOLING	Semi-annual (Seasonal PM)
17	FLATBUSH SUBSTATION 480V FACILITY	YASAKAWA	Z1B1D007PMGTW	4W17715655950001	HEATING & COOLING	Semi-annual (Seasonal PM)
18	FLATBUSH MOTOR GENERATOR BUILDING	TRANE	TTA12044DAA00AE0000000000	18201685YA	HEATING & COOLING	Semi-annual (Seasonal PM)
19	FLATBUSH MOTOR GENERATOR BUILDING	TRANE	TWE12043BAA00A00000000000	18292523BA	HEATING & COOLING	Semi-annual (Seasonal PM)
20	FLATBUSH MOTOR GENERATOR BUILDING	MITSUBISHI ELECTRIC	PUZ-A24NHA7	85U07198C	HEATING & COOLING	Semi-annual (Seasonal PM)
21	FLATBUSH MOTOR GENERATOR BUILDING	MITSUBISHI ELECTRIC	PEAD-A24AA7 MX	83R02506	HEATING & COOLING	Semi-annual (Seasonal PM)
22	FLATBUSH MOTOR GENERATOR BUILDING	GREENHECK	TCB-2-24-100-X	14476230	EXHAUST FAN	Semi-annual (Seasonal PM)
23	FLATBUSH MOTOR GENERATOR BUILDING	GREENHECK	TCB-2-24-100-X	14476231	EXHAUST FAN	Semi-annual (Seasonal PM)
24	ARCH STREET SUBSTATION BUILDING	MARVAIR	AVP12ACA22N-1000	JP-F000099409-000-001	HEATING & COOLING	Semi-annual (Seasonal PM)
25	ARCH STREET SUBSTATION BUILDING	SPEIFIC SYSTEMS	APK120D1BXX20XXXXXF	4471-1	HEATING & COOLING	Semi-annual (Seasonal PM)
26	ARCH STREET SUBSTATION BUILDING	SPEIFIC SYSTEMS	APK120D1BXX20XXXXXF	4471-2	HEATING & COOLING	Semi-annual (Seasonal PM)
27	ARCH STREET SUBSTATION BUILDING	SPEIFIC SYSTEMS	APK120D1BXX20XXXXXF	4471-3	HEATING & COOLING	Semi-annual (Seasonal PM)
28	ARCH STREET SUBSTATION BUILDING	SPEIFIC SYSTEMS	APK120D1BXX20XXXXXF	4471-4	HEATING & COOLING	Semi-annual (Seasonal PM)
29	ARCH STREET SUBSTATION BUILDING	SPEIFIC SYSTEMS	APK120D1BXX20XXXXXF	4471-5	HEATING & COOLING	Semi-annual (Seasonal PM)
30	HAROLD MOTOR GENERATOR BUILDING	BARD MANUFACTURING CORP	W70A1-B09XXXXXJ	NAME PLATE REMOVED	HEATING & COOLING	Semi-annual (Seasonal PM)
31	HAROLD MOTOR GENERATOR BUILDING	BARD MANUFACTURING CORP	W72AC-B09XXXX3F	404C234084532-02	HEATING & COOLING	Semi-annual (Seasonal PM)
32	WOODSIDE MOTOR GENERATOR BUILDING	BARD MANUFACTURING CORP	W70A1-B09XXXXXJ	338L122949595-02	HEATING & COOLING	Semi-annual (Seasonal PM)
33	WOODSIDE MOTOR GENERATOR BUILDING	BARD MANUFACTURING CORP	W72AC-B09XXXX3F	404C234064535-02	HEATING & COOLING	Semi-annual (Seasonal PM)
34	FAR ROCKAWAY MOTOR GENERATOR BUILDING	BARD MANUFACTURING CORP	WL701-B09XXXXXJ	187C082480913-02	HEATING & COOLING	Semi-annual (Seasonal PM)
35	FAR ROCKAWAY MOTOR GENERATOR BUILDING	BARD MANUFACTURING CORP	W72AC-B09XXXX3F	404C234064533-02	HEATING & COOLING	Semi-annual (Seasonal PM)
36	FAR ROCKAWAY SUBSTATION BUILDING	BARD MANUFACTURING CORP	WA121-A05XXXXXJ	158B082458827-01	HEATING & COOLING	Semi-annual (Seasonal PM)
37	LONG ISLAND CITY SUBSTATION TRANSFORMER	SUN AIR CONDITIONING	AVE48H315C	03AP2180	HEATING & COOLING	Semi-annual (Seasonal PM)
38	LONG ISLAND CITY SUBSTATION TRANSFORMER	SUN AIR CONDITIONING	AVE48H315C	03AP2182	HEATING & COOLING	Semi-annual (Seasonal PM)
39	LONG ISLAND CITY SUBSTATION TRANSFORMER	SUN AIR CONDITIONING	AVE48H315C	03AP2183	HEATING & COOLING	Semi-annual (Seasonal PM)
40	LONG ISLAND CITY SUBSTATION TRANSFORMER	BARD MANUFACTURING CORP	W4BA2-B89XXXXXJ	401A193619721-02	HEATING & COOLING	Semi-annual (Seasonal PM)
41	SUNNYSIDE SUBSTATION BUILDING	BARD MANUFACTURING CORP	WA182-A05XX4XXJ	139P082587650-02	HEATING & COOLING	Semi-annual (Seasonal PM)
42	WINFIELD MOTOR GENERATOR BUILDING	BARD MANUFACTURING CORP	W72AC-B09XXXX3F	404A234043153	HEATING & COOLING	Semi-annual (Seasonal PM)
43	KEW GARDENS SUBSTATION BUILDING	BARD MANUFACTURING CORP	W17A2-A05BPXX3J	313A143086354-02	HEATING & COOLING	Semi-annual (Seasonal PM)
44	HILLSIDE SUBSTATION BUILDING	BARD MANUFACTURING CORP	W17A1-A05BPXX3J	313K133052472-02	HEATING & COOLING	Semi-annual (Seasonal PM)
45	BELLAIRE SUBSTATION BUILDING	BARD MANUFACTURING CORP	W121-A05XPXXJ	1586082552073-01	HEATING & COOLING	Semi-annual (Seasonal PM)
46	FLORAL PARK MOTOR GENERATOR BUILDING	BARD MANUFACTURING CORP	W72AC-B09XXXX3F	404A234043154-02	HEATING & COOLING	Semi-annual (Seasonal PM)
47	FLORAL PARK MOTOR GENERATOR BUILDING	BARD MANUFACTURING CORP	M72AC-B09XXXX3F	404C234064531-02	HEATING & COOLING	Semi-annual (Seasonal PM)
48	FLORAL PARK SUBSTATION BUILDING	BARD MANUFACTURING CORP	WA121-A05XXXXXJ	158B082458827-01	HEATING & COOLING	Semi-annual (Seasonal PM)
49	MINEOLA MOTOR GENERATOR BUILDING	BARD MANUFACTURING CORP	W72LB-B06XP4XXJ	404D193645333-02	HEATING & COOLING	Semi-annual (Seasonal PM)
50	MINEOLA MOTOR GENERATOR BUILDING	BARD MANUFACTURING CORP	W72LB-B06XP4XXJ	404D193645332-02	HEATING & COOLING	Semi-annual (Seasonal PM)
51	FARMINGDALE SUBSTATION BUILDING	BARD MANUFACTURING CORP	W72AC-A052PXX3M	403L234137440-02	HEATING & COOLING	Semi-annual (Seasonal PM)
52	FARMINGDALE SUBSTATION TRANSFORMER	BARD MANUFACTURING CORP	W24A1-A10	314F122903718-02	HEATING & COOLING	Semi-annual (Seasonal PM)
53	DEER PARK MOTOR GENERATOR BUILDING	BARD MANUFACTURING CORP	W72AB-B06XP4XXJ	404J183573465-02	HEATING & COOLING	Semi-annual (Seasonal PM)
54	DEER PARK MOTOR GENERATOR BUILDING	BARD MANUFACTURING CORP	W72AB-B06XP4XXJ	404J183573468-02	HEATING & COOLING	Semi-annual (Seasonal PM)
55	RONKONKOMA MOTOR GENERATOR BUILDING	BARD MANUFACTURING CORP	W72AB-B06XP4XXJ	404J183573467-02	HEATING & COOLING	Semi-annual (Seasonal PM)
56	RONKONKOMA MOTOR GENERATOR BUILDING	BARD MANUFACTURING CORP	W72AB-B06XP4XXJ	404J183573466-02	HEATING & COOLING	Semi-annual (Seasonal PM)
57	RONKONKOMA SUBSTATION BUILDING	BARD MANUFACTURING CORP	W12AAAA05XP4XXJ	406F193654485-01	HEATING & COOLING	Semi-annual (Seasonal PM)
58	NASSAU BLVD SUBSTATION BUILDING	MARVAIR	AVPA12ACA050N-A5-100	LE-F141651-0-1	HEATING & COOLING	Semi-annual (Seasonal PM)

59	HEMPSTEAD MOTOR GENERATOR	BARD MANUFACTURING CORP	W72AC-B09XXX3F	404C234064534-02	HEATING & COOLING	Semi-annual (Seasonal PM)
60	HEMPSTEAD MOTOR GENERATOR	BARD MANUFACTURING CORP	EA701-B09XXXXJ	187C082475024-02	HEATING & COOLING	Semi-annual (Seasonal PM)
61	HEMPSTEAD SUBSTATION BUILDING	BARD MANUFACTURING CORP	WA121-A05XXXXXJ	158B082458832-01	HEATING & COOLING	Semi-annual (Seasonal PM)
62	HOLBAN HILLSIDE SUBSTATION BUILDING	BRYANT	PA45AN44200NABAA	0423X47411	HEATING & COOLING	Semi-annual (Seasonal PM)
63	HOLBAN HILLSIDE SUBSTATION BUILDING	COLEMAN	AP42CX21C	W2F1175204	HEATING & COOLING	Semi-annual (Seasonal PM)
64	HALL MOTOR GENERATOR BUILDING	TRANE	AL4TCC3060A3000BA	1340110942	HEATING & COOLING	Semi-annual (Seasonal PM)
65	OCEANSIDE SUBSTATION BUILDING	BARD MANUFACTURING CORP	W12A2-A05XPXXXJ	330B143098615-01	HEATING & COOLING	Semi-annual (Seasonal PM)
66	OIL CITY BLVD SUBSTATION BUILDING	BARD MANUFACTURING CORP	W12AAA05XPXXXJ	406J153252000-01	HEATING & COOLING	Semi-annual (Seasonal PM)
67	LONG BEACH SUBSTATION BUILDING	BARD MANUFACTURING CORP	W30AA-B09BPSX3J	347M163373177-02	HEATING & COOLING	Semi-annual (Seasonal PM)
68	LITTLE NECK SUBSTATION BUILDING	BARD MANUFACTURING CORP	WA121-A05XXXXXJ	158L02552066-1	HEATING & COOLING	Semi-annual (Seasonal PM)
69	PORTWASHINGTON MOTOR GENERATOR	BARD MANUFACTURING CORP	W60AA-A05BXAXXJ	415L173473431-02	HEATING & COOLING	Semi-annual (Seasonal PM)
70	PORTWASHINGTON MOTOR GENERATOR	BARD MANUFACTURING CORP	W60AA-A05BXAXXJ	415L173473430-02	HEATING & COOLING	Semi-annual (Seasonal PM)
71	PORT WASHINGTON SUBSTATION	BARD MANUFACTURING CORP	W24AA-A05BXAXXJ	314F173438475-02	HEATING & COOLING	Semi-annual (Seasonal PM)
72	PORT WASHINGTON SUBSTATION	BARD MANUFACTURING CORP	W18AA-A05BXAXXJ	313F173438496-02	HEATING & COOLING	Semi-annual (Seasonal PM)
73	OYSTER BAY MOTOR GENERATOR	BARD MANUFACTURING CORP	W70A2-B09XXXXXE	404N133078922-02	HEATING & COOLING	Semi-annual (Seasonal PM)
74	ROCKVILLE CENTER SUBSTATION BUILDING	BARD MANUFACTURING CORP	W36A1-A05BPXXXJ	309C102687619-02	HEATING & COOLING	Semi-annual (Seasonal PM)
75	MEADOWBROOK SUBSTATION BUILDING	BARD MANUFACTURING CORP	WA121-A05XXXXXJ	158L082552075-01	HEATING & COOLING	Semi-annual (Seasonal PM)
76	MERRICK SUBSTATION BUILDING	BARD MANUFACTURING CORP	AG72AA-B152XXXXE	158L082552075-01	HEATING & COOLING	Semi-annual (Seasonal PM)
77	WANTAGH MOTOR GENERATOR BUILDING	BARD MANUFACTURING CORP	W72AA-B15ZXXXXE	404F173430703-02	HEATING & COOLING	Semi-annual (Seasonal PM)
78	LINDENHURST SUBSTATION BUILDING	BARD MANUFACTURING CORP	WA121-A05XXXXXJ	158F082507955-01	HEATING & COOLING	Semi-annual (Seasonal PM)
79	WEST HEMPSTEAD	BARD MANUFACTURING CORP	W72AA-B15ZXXXXE 6T	404M173488638-02	HEATING & COOLING	Semi-annual (Seasonal PM)



**ATTACHMENT C**  
LIRR Safety & Roadway Worker Protection Training

***LIRR Contractor Safety & Roadway Worker Protection Training***

93-59 183rd Street MC 3149A  
Hollis NY 11423  
(718) 558-7950

**Training Requirement**

The Contractor is required to attend LIRR Contractor Safety & Roadway Worker Protection (“Safety/RWP”) Training prior to performing any work on LIRR/MTA property or premises. The Contractor shall ensure that all individuals performing work on its behalf including employees, subcontractors, agents and representatives (collectively, “Contractor Personnel”) have completed the Safety/RWP Training prior to any Contractor Personnel performing any work on, at or near any LIRR/MTA property or premises.

Safety/RWP Training is an annual requirement and the Contractor shall ensure that all Contractor Personnel are in compliance with this Safety/RWP Training requirement each year before performing any work under the Contract.

The Safety/RWP Training provided by LIRR is free to attend, however, the Contractor shall pay any and all other costs related to attendance by its Contractor Personnel. LIRR shall not be required to pay, and will not pay, for any labor or other costs related to the Safety/RWP Training for Contractor Personnel. The Contractor acknowledges that it shall not be entitled to any compensation or reimbursement from LIRR under the Contract for any time spent by Contractor Personnel in attending the Safety/RWP Training including, but not limited to, time in class, travel, preparation or compliance. Under no circumstances may the Contractor include costs or expenses for Safety/RWP Training on invoices submitted to LIRR for payment under the Contract.

**LIRR Training**

Contact [SafetyTraining@lirr.org](mailto:SafetyTraining@lirr.org) for the current class schedule, registration requirements and to inquire about any additional information concerning this training.



**ATTACHMENT B**

**THE CONTRACTOR RESPONSIBILITY FORM**

**AND**

**THE CONTRACT SPECIFIC RESPONSIBILITY**

**FORM**

**Solicitation No.: 0000491305**

# MTA CONTRACTOR RESPONSIBILITY FORM

## **INSTRUCTIONS:**

1. Attachment B, Contractor Responsibility Form (the “Responsibility Form”) consists of both the Contractor Responsibility Form and the Contract Specific Responsibility Form. Both forms must be completed for: (i) all contracts in the amount of \$250K or greater; (ii) Contractors and Subcontractors in contracts involving “Special Circumstances” (as defined below); (iii) all known Subcontractors having “Significant Subcontracts” (as defined below); (iv) change orders which require approval by the MTA Board; and (v) whenever required by the MTA. The individual who signs this Responsibility Form must have the authority to legally bind the contractor or subcontractor.
2. If Contractor has previously submitted a Responsibility Form within the past twelve (12) months and if there have not been any changes to information contained in the previously submitted form, the Contractor does not need to complete this Responsibility Form. Instead Contractor may complete the Certification of No Change.
3. Contractor must answer all questions in this Responsibility Form. “None” or “not applicable” may be used for those questions where these responses are appropriate, but no answers can be left blank. Information that Contractor believes to be unfavorable must be disclosed. While unfavorable information will be considered in the MTA’s overall responsibility finding, it will not necessarily result in the denial of a contract award.
4. Contractor may attach additional sheets to its response if more space is needed to fully respond to any question. If after submitting the Responsibility Form, Contractor realizes any of its responses to the questions are incorrect, incomplete or the answer(s) have otherwise changed, Contractor must promptly submit written notice of those changes to the designated point of contact for the solicitation. If the contract has since been awarded, then the notice of changes must be submitted to both the Agency’s Chief Procurement Officer and the designated point of contact for the contract.
5. Contractor shall fully cooperate with the MTA in connection with the MTA’s review of its responses to this Responsibility Form, including any MTA requests for further information/discussions and backup documentation.
6. Unless otherwise stated in this document, the applicable time frame for all questions is the prior ten (10) years.
7. Contractor must affirmatively demonstrate its responsibility both prior to award and throughout the life of the contract in order to be deemed “Presently Responsible” (as defined below).

## MTA CONTRACTOR RESPONSIBILITY FORM

### 8. Definitions:

- a. Contractor: Any entity that intends to contract with the MTA or become a Significant Subcontractor, including contractors, suppliers, bidders, proposers or entities that wish to participate in future MTA procurement solicitations.
- b. Control: (i) directing or having the right to direct daily operations; and/or (ii) holding a ten percent (10%) or more ownership interest in the company.
- c. Managerial Employees: Employees who operate in a supervisory capacity and, either by virtue of their title or their duties, operate with discretion over solicitation, letting, or management of contracts with public agencies.
- d. MTA: the Metropolitan Transportation Authority and its present and future subsidiary and affiliate agencies, including New York City Transit Authority (“NYCT”) and its subsidiary agencies including Manhattan and Bronx Surface Transit Operating Authority (“MaBSTOA”) and Staten Island Rapid Transit Operating Authority (“SIRTOA”), Triborough Bridge and Tunnel Authority (“TBTA”), Metro-North Commuter Railroad Company (“MNR”), Long Island Rail Road (“LIRR”), MTA Bus Company (“MTA BC”), MTA Construction and Development Company (“MTAC&D”) and First Mutual Transportation Assurance Company (“FMTAC”).
- e. Monitor: an independent private sector firm with legal, audit, investigative and loss prevention skills, employed voluntarily or by compulsory process, to monitor an entity’s business activities in order to ensure compliance with relevant laws and regulations, and to uncover and report unethical or illegal conduct within and against the entity. This definition includes Independent Private Sector Inspector Generals.
- f. Present Responsibility: Ongoing review of Contractor’s fitness for work.
- g. Significant Subcontracts: subcontracts in which the Subcontractor is proposed to perform work (i) valued at \$1 million or more and more than 10% of the prime contract value; or (ii) valued at \$5 million or more; or (iii) in Special Circumstances subcontracts of \$100,000 or more. A Significant or Special Circumstances Subcontractor is required to complete and submit the Responsibility Form. The Contractor that is proposing, or requesting approval for, the Significant or Special Circumstances Subcontractor will obtain the completed Responsibility Form from the Subcontractor and provide it to NYCT.
- h. Special Circumstances: Contracts or subcontracts valued at \$100,000 or more relating to the following types of work: painting, scrap, concrete, lead, asbestos, and carting, or such other areas as the MTA may designate from time to time.

# MTA CONTRACTOR RESPONSIBILITY FORM

## PART I IDENTITY OF CONTRACTOR:

- A. Contractor's full legal name: \_\_\_\_\_
- B. Contractor's mailing address: \_\_\_\_\_  
\_\_\_\_\_
- C. Contractor's street address (only if different than mailing address): \_\_\_\_\_  
\_\_\_\_\_
- D. If Contractor has changed its mailing address or street address within the past five (5) years, list all prior addresses within that five (5) year period:  
\_\_\_\_\_  
\_\_\_\_\_
- E. Name, e-mail and telephone number of Contractor's primary point of contact with the MTA:  
\_\_\_\_\_  
\_\_\_\_\_
- F. Contractor's Employer Identification Number ("EIN"): \_\_\_\_\_
- G. Type of legal entity (corporation, joint venture, sole proprietorship, etc.):  
\_\_\_\_\_  
\_\_\_\_\_

If the Contractor is a joint venture or partnership, please list all parties to the joint venture and partners to the partnership. All partners and parties listed below are required to each complete their own Responsibility Form.

- (1) Partner/Party name: \_\_\_\_\_  
TIN, EIN, or SSN \_\_\_\_\_ Percentage of Ownership: \_\_\_\_\_
- (2) Partner/Party name: \_\_\_\_\_  
TIN, EIN, or SSN \_\_\_\_\_ Percentage of Ownership: \_\_\_\_\_
- (3) Partner/Party name: \_\_\_\_\_  
TIN, EIN, or SSN \_\_\_\_\_ Percentage of Ownership: \_\_\_\_\_

- H. List year Contractor was organized/incorporated and the state of organization/incorporation. If organized under the laws of a foreign country, please list the country:  
\_\_\_\_\_

## MTA CONTRACTOR RESPONSIBILITY FORM

- I. List any doing business as or “DBA”, name, trade name or abbreviation the Contractor has used over the past five (5) years.

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### **PART II IDENTITY OF PERSON COMPLETING THIS FORM:**

A. Name: \_\_\_\_\_

B. Employer/Title: \_\_\_\_\_

C. Office and mobile number: \_\_\_\_\_

D. Email address: \_\_\_\_\_

### **PART III CONTRACTOR REPRESENTATIONS:**

The following questions apply to any bid, proposal, or contract between Contractor and any governmental entity, including but not limited to the City and State of New York, the United States government or the MTA. (If the answer to any question is “YES”, Contractor must provide all relevant information on a separate sheet annexed hereto). Please check this box if a separate sheet is attached: ☐

The following questions apply to: (i) Contractor, Contractor’s parent(s), subsidiaries and affiliates of Contractor (if any); (ii) any joint venture (including its individual members) and any other form of partnership (including its individual members) which include Contractor or Contractor’s parent(s), subsidiaries, or affiliates of Contractor, (iii) Contractor’s directors, officers, principals, Managerial Employees, and any person or entity with a 10% or more ownership interest in Contractor; (iv) any legal entity controlled, or 10% or more of which is owned, by Contractor, or by any director, officer, principal, Managerial Employee of Contractor, or by any person or entity with a 10% or more interest in Contractor.

A. Within the past five (5) years, has Contractor been declared not responsible by any governmental entity? YES ☐ NO ☐

B. Within the past ten (10) years, has Contractor been debarred, suspended, or otherwise disqualified from bidding, proposing, or contracting by any governmental entity? YES ☐ NO ☐

C. Is there a proceeding pending relating to Contractor’s responsibility, debarment, suspension, or qualification to receive a public contract with any governmental entity? YES ☐ NO ☐

D. Within the past five (5) years, has Contractor defaulted on a contract or been terminated for cause? YES ☐ NO ☐

## MTA CONTRACTOR RESPONSIBILITY FORM

- E. Within the past ten (10) years, has any entity requested or required enforcement of any of its rights under a surety agreement on the basis of the Contractor's default or in lieu of declaring Contractor in default?

YES ☐ NO ☐

- F. Within the past five (5) years, has the Contractor been required to engage the services of a Monitor in connection with the award of or in order to complete, any contract?

YES ☐ NO ☐

- G. Within the past five (5) years, have Contractor's safety practices/procedures been evaluated and ruled as less than satisfactory?

YES ☐ NO ☐

- H. Has Contractor's workers compensation experience rating been 1.2 or greater at any time in the last five (5) years? If "yes", please explain and provide ratings for the most recent five (5) years.

YES ☐ NO ☐

### **PART IV QUESTIONS WHICH MUST BE ANSWERED BY "YES" or "NO":**

Please attach a complete organization chart and indicate on that chart which entities are in a direct line of report to and from Contractor in the same business group.

If the Contractor answers "YES" to any question below, it must provide all relevant information on a separate sheet that must be attached to this Responsibility Form. Please check this box if a separate sheet is attached. ☐

After diligent inquiry, in connection with the business of the Contractor or any other company that is related to Contractor by a direct line of reporting, in the same business group, do any of the following questions apply to: (i) Contractor, Contractor's parent(s), subsidiaries and affiliates of Contractor (if any); (ii) any joint venture (including its individual members) and any other form of partnership (including its individual members), which includes Contractor or Contractor's parent(s), subsidiaries, or affiliates of Contractor; (iii) Contractor's directors, officers, principals, Managerial Employees, and any person or entity with a 10% or more interest in Contractor; (iv) any legal entity Controlled, or 10% or more of which is owned, by Contractor, or by any director, officer, principal, Managerial Employee of Contractor, or by any person or entity with a 10% or more interest in Contractor:

- A. Within the past ten (10) years has been convicted of or pleaded nolo contendere to: (i) any felony; or (ii) a misdemeanor related to truthfulness in connection with business conduct?

YES ☐ NO ☐

- B. Within the past ten (10) years, had or has pending before any state or federal grand jury or court an indictment or information of the commission of a crime which has not been favorably terminated?

YES ☐ NO ☐

## MTA CONTRACTOR RESPONSIBILITY FORM

- C. Within the past ten (10) years, has been or is the subject of a pending investigation by any grand jury, commission, committee or other entity or agency or authority of any local, state, or the federal government in connection with the commission or alleged commission of a crime?

YES ☐ NO ☐

- D. Within the past ten (10) years, has been or is currently disqualified from selling or submitting bids/proposals to, or receiving awards from, or entering into any contract with any government entity?

YES ☐ NO ☐

- E. Within the past five (5) years, has refused to testify or to answer any question concerning a bid or contract with any entity when called before a grand jury or other committee, agency or forum which is empowered to compel the attendance of witnesses and examine them under oath, upon being advised that neither the person's statement nor any information or evidence derived from such statement will be used against that person in any subsequent criminal proceeding?

YES ☐ NO ☐

- F. Has been or is currently disqualified from selling or submitting a bid to, or receiving an award from, or entering into any contract with any public entity or public authority within the State of New York because, within the past five (5) years, such entity or person refused to testify or to answer any relevant question concerning a transaction or contract with the State of New York, any political subdivision of the State of New York, or a public authority or a public department, agency or official of the State of New York or of a political subdivision of the State of New York, when called before a grand jury or other state or local department, commission or agency which is empowered to compel the attendance of witnesses and examine them under oath, upon being advised that neither that person's statement nor any information or evidence derived from such statement will be used against that person in any subsequent criminal proceeding?

YES ☐ NO ☐

- G. Within the past ten (10) years, has been convicted of or had a civil judgment rendered against it for or in relation to: (i) 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; (ii) collusion with another person or entity in connection with the submission of bids/proposals; (iii) violation of federal or state antitrust statutes or False Claims Acts; or (iv) commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statement(s) or receiving stolen property?

YES ☐ NO ☐

- H. Within the past ten (10) years, has entered into a deferred prosecution agreement, or a non-prosecution agreement?

YES ☐ NO ☐



## MTA CONTRACTOR RESPONSIBILITY FORM

Explain any “YES” answer in Part IV in the space provided below (or attach additional pages immediately after this page and indicate below that additional pages have been attached).

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### **PART V ADDITIONAL QUESTIONS:**

In the event of an answer of “Yes” to any questions in Part V, Contractor must provide all relevant information on a separate sheet of paper attached to this Responsibility Form.

- A. List the name, title, and home and business address of each person or legal entity that holds 10% or more ownership or Control interest in Contractor (attach additional sheets as necessary):
- 1.

Name:	
Title:	
Home Address:	
Business Address:	
Email Address:	
Business Phone #:	

## MTA CONTRACTOR RESPONSIBILITY FORM

2.

Name:	
Title:	
Home Address:	
Business Address:	
Email Address:	
Business Phone #	

3.

Name:	
Title:	
Home Address:	
Business Address:	
Email Address:	
Business Phone #:	

B. List the name, title, and home and business address of each director and principal officer of Contractor (attach additional sheets as necessary):

1.

Name:	
Title:	
Home Address:	
Business Address:	
Email Address:	
Business Phone #:	

2.

Name:	
Title:	
Home Address:	
Business Address:	
Email Address:	
Business Phone #:	

3.

Name:	
Title:	
Home Address:	
Business Address:	
Email Address:	
Business Phone #:	

## MTA CONTRACTOR RESPONSIBILITY FORM

- C. In the past three (3) years, has Contractor been a subcontractor on any contract with MTA?  
YES ☐ NO ☐

If the answer is yes, please provide the contract number, contract description and name of the prime Contractor (attach additional sheets as necessary).

- D. In the past seven (7) years, has the Contractor filed for bankruptcy protection?  
YES ☐ NO ☐

- E. In the past five (5) years, have there been any judgments, injunctions, or liens (including tax liens) in the amount of \$100,000 or more rendered including but not limited to, judgments based on taxes owed, fines and penalties assessed by a government agency against the Contractor?  
YES ☐ NO ☐

- F. Are there any judgments, injunctions, or liens for \$100,000 or more each against Contractor that remain open, unsatisfied or in effect today?  
YES ☐ NO ☐

- G. During the past five (5) years, has the Contractor failed to file, or been delinquent in filing, any federal, state or local tax return?  
YES ☐ NO ☐

- H. Does the Contractor own or rent office space? Please provide details. YES ☐ NO ☐
- 

- I. Does any owner or principal officer of the Contractor, or any member of their immediate family, have an ownership interest in any entity that holds the title or lease to any real property used by the Contractor?  
YES ☐ NO ☐

- J. Does Contractor share office space, staff, equipment, or expenses with any other entity/entities? If "YES", please list the name of the entity/entities, where the office space/equipment is located, who owns the office space/equipment, the names of the staff that are shared and their functions and titles, and the expenses that are shared, along with the duration of all of the above.  
YES ☐ NO ☐
-

## MTA CONTRACTOR RESPONSIBILITY FORM

K.

1. List all contracts completed during the last three (3) years. If more than three (3) contracts have been completed in the past three (3) years, list the last three (3) contracts completed. If the answer is none, type "None". \_\_\_\_\_

a. Brief description of work performed: \_\_\_\_\_

\_\_\_\_\_

Contract number: \_\_\_\_\_ Dollar amount of award: \_\_\_\_\_

Date Completed: \_\_\_\_\_ Dollar amount at completion: \_\_\_\_\_

Name/Telephone number of company and owner's representative: \_\_\_\_\_

\_\_\_\_\_

b. Brief description of work performed: \_\_\_\_\_

\_\_\_\_\_

Contract number: \_\_\_\_\_ Dollar amount of award: \_\_\_\_\_

Date Completed: \_\_\_\_\_ Dollar amount at completion: \_\_\_\_\_

Name/Telephone number of company and owner's representative: \_\_\_\_\_

\_\_\_\_\_

c. Brief description of work performed: \_\_\_\_\_

\_\_\_\_\_

Contract number: \_\_\_\_\_ Dollar amount of award: \_\_\_\_\_

Date Completed: \_\_\_\_\_ Dollar amount at completion: \_\_\_\_\_

Name/Telephone number of company and owner's representative: \_\_\_\_\_

\_\_\_\_\_

## MTA CONTRACTOR RESPONSIBILITY FORM

2. List each contract completed by Contractor during the last three (3) years for which liquidated damages or penalties were assessed against Contractor, along with the reason for the assessment of damages/penalties. If the answer is none, type "None". \_\_\_\_\_

a. Brief description of work performed: \_\_\_\_\_

\_\_\_\_\_

Contract number: \_\_\_\_\_ Dollar amount of award: \_\_\_\_\_

Date Completed: \_\_\_\_\_ Dollar amount at completion: \_\_\_\_\_

Name/Telephone number of company and owner's representative: \_\_\_\_\_

\_\_\_\_\_

Reason: \_\_\_\_\_

\_\_\_\_\_

b. Brief description of work performed: \_\_\_\_\_

\_\_\_\_\_

Contract number: \_\_\_\_\_ Dollar amount of award: \_\_\_\_\_

Date Completed: \_\_\_\_\_ Dollar amount at completion: \_\_\_\_\_

Name/Telephone number of company and owner's representative: \_\_\_\_\_

\_\_\_\_\_

Reason: \_\_\_\_\_

\_\_\_\_\_

## MTA CONTRACTOR RESPONSIBILITY FORM

c. Brief description of work performed: \_\_\_\_\_

\_\_\_\_\_

Contract number: \_\_\_\_\_ Dollar amount of award: \_\_\_\_\_

Date Completed: \_\_\_\_\_ Dollar amount at completion: \_\_\_\_\_

Name/Telephone number of company and owner's representative: \_\_\_\_\_

\_\_\_\_\_

Reason: \_\_\_\_\_

\_\_\_\_\_

3. Has the Contractor been awarded any contracts by the MTA where the work has not yet reached substantial completion? If none, state "None". \_\_\_\_\_ If yes, provide the following information (attach additional sheets if necessary).

Name of Contracting Entity: \_\_\_\_\_ Contract number: \_\_\_\_\_

Award Date: \_\_\_\_\_ Contract period: \_\_\_\_\_

Brief description of the work to be performed: \_\_\_\_\_

\_\_\_\_\_

Awarded to Contractor as prime contractor or joint venture? \_\_\_\_\_

Percent of Completion: \_\_\_\_\_

Name/Telephone number of owner's representative: \_\_\_\_\_

\_\_\_\_\_

## MTA CONTRACTOR RESPONSIBILITY FORM

4. Does the Contractor have any active contracts with any government entity where the contract work is being managed by the same office that manages its contracts with MTA? If none, state "None". \_\_\_\_\_ If yes, provide the following information. Contractor need not provide more than three (3) such descriptions (include the most recent and highest dollar value contracts).

Name of Contracting Entity: \_\_\_\_\_ Contract number: \_\_\_\_\_

Award Date: \_\_\_\_\_ Contract period: \_\_\_\_\_

Brief description of the work to be performed: \_\_\_\_\_

\_\_\_\_\_

Awarded to Contractor as prime contractor or joint venture? \_\_\_\_\_

Percent of Completion: \_\_\_\_\_

Name/Telephone number of owner's representative: \_\_\_\_\_

\_\_\_\_\_

5. Has the Contractor performed or is performing as a subcontractor on any contracts awarded by the MTA where the contract has not yet reached substantial completion? If none, state "None". \_\_\_\_\_ If yes, provide the following information (attach additional sheets if necessary).

Name of Contracting Entity: \_\_\_\_\_ Contract number: \_\_\_\_\_

Award Date: \_\_\_\_\_ Contract period: \_\_\_\_\_

Brief description of the work to be performed: \_\_\_\_\_

\_\_\_\_\_

Awarded to Contractor as prime contractor or joint venture? \_\_\_\_\_

Percent of Completion: \_\_\_\_\_

Name/Telephone number of owner's representative: \_\_\_\_\_

\_\_\_\_\_

## MTA CONTRACTOR RESPONSIBILITY FORM

L. Furnish the following information for each contract for which, during the last three (3) years, the Contractor was:

- (1) Defaulted and terminated; or
- (2) Sued to compel performance; or
- (3) Sued to recover damages, including, without limitation, upon an alleged breach of contract, misfeasance, error or omission or other alleged failure on Contractor's part to perform as required by the contract; or
- (4) Called upon a surety to perform the work; or
- (5) Required to engage the services of a Monitor in connection with the award of or in order to complete, any public or private contract; or
- (6) Required to draw on a letter of credit in lieu of a performance bond.

a. Brief description of work performed: \_\_\_\_\_

\_\_\_\_\_

Contract number: \_\_\_\_\_ Dollar amount of award: \_\_\_\_\_

Date Completed: \_\_\_\_\_ Dollar amount at completion: \_\_\_\_\_

Name/Telephone number of company and owner's representative: \_\_\_\_\_

\_\_\_\_\_

If none of the above situations occurred during the last three (3) years, state "NONE" here: \_\_\_\_\_



## MTA CONTRACTOR RESPONSIBILITY FORM

M. Attach additional sheets as needed in response to 1 below. If the answer is none, type "None".

1. List all employees, consultants and independent contractors of the Contractor who are currently employees of the MTA:

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

Currently employed by: (check as appropriate)

MTA ☐    NYCT ☐    MaBSTOA ☐    SIRTOA ☐    MNR ☐    LIRR ☐  
TBTA ☐    MTAC&D ☐    MTA BC ☐

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

Currently employed by: (check as appropriate)

MTA ☐    NYCT ☐    MaBSTOA ☐    SIRTOA ☐    MNR ☐    LIRR ☐  
TBTA ☐    MTAC&D ☐    MTA BC ☐

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

Currently employed by: (check as appropriate)

MTA ☐    NYCT ☐    MaBSTOA ☐    SIRTOA ☐    MNR ☐    LIRR ☐  
TBTA ☐    MTAC&D ☐    MTA BC ☐

- N. Does the Contractor have any subsidiary or affiliate companies in a direct line of report to the Contractor within the same business group?

YES ☐    NO ☐

- O. Is Contractor a subsidiary of another entity in a direct line of report in the same business group?

YES ☐    NO ☐

- P. Within the past five (5) years or currently, does Contractor, any director, officer, principal, Managerial Employee of Contractor, or any person or entity with a 10% or more interest in Contractor have an interest of 10% or more in any other legal entity?

YES ☐    NO ☐

- Q. If the answer to N, O, or P, is "YES", would Contractor's answers pertaining to Part V Questions A through M above be the same for each such parent, subsidiary, affiliate, firm or legal entity in a direct line of report to or from Contractor within the same business group? If not, please provide a full explanation on a separate sheet of paper.

YES ☐    NO ☐

**MTA CONTRACTOR RESPONSIBILITY FORM**

**PART VI IDENTITY OF OWNERS/PARTNERS**

Who are the owners and/or partners of the Contractor and what percentage does each such person or entity own?

Name of Partner/Owner	Percentage Owned

## MTA CONTRACTOR RESPONSIBILITY FORM

### PART VII CONTRACT SPECIFIC RESPONSIBILITY FORM

This form is to be completed and submitted with the Attachment B, Contractor Responsibility Form.

Contract #: \_\_\_\_\_ (the "Contract").

Contractor/Subcontractor name: \_\_\_\_\_

If Subcontractor, provide prime Contractor name: \_\_\_\_\_

#### 1. TECHNICAL RESOURCES

Attach an explanation that will assist the MTA in determining whether Contractor and/or Significant Subcontractor have the necessary technical resources to perform the Contract work. Please include information relating to staffing, facilities, equipment, and tools that Contractor or Significant Subcontractor will commit to the performance of this Contract. If this information has already been provided elsewhere, please note the section of the bid/proposal that is responsive.

See Section: \_\_\_\_\_

Please check this box if a separate sheet providing an explanation is attached. ☐

#### 2. LICENSES

Please list any licenses, permits, or certifications that Contractor or Significant Subcontractor or your employees hold that may be relevant to this Contract. If the license, permit or certification has been revoked or suspended, please state so and explain the details.

License/Permit/Certification	Name of Holder	Issuing State or Entity

## MTA CONTRACTOR RESPONSIBILITY FORM

3. Have any of Contractor or Significant Subcontractor officers, partners, owners, managers, or employees had any (irrespective of whether they are contract specific) licenses, permits, or certifications revoked or suspended in the past three years? If "Yes", explain details below (or attach a separate sheet).

### 4. PERFORMANCE BOND INFORMATION

*(This section is only applicable to solicitations in which the Contractor is required to provide a performance bond. This section is not applicable to Significant Subcontractors.)*

Provide the names and addresses of the surety or sureties that will provide the performance bond required by this Contract.

Name	Address	Amount

### 5. SUBCONTRACTS

*(This section is not applicable to Significant Subcontractors.)*

Which portions of this Contract, if any, does Contractor expect to subcontract? Attach an additional sheet if necessary. If subcontractors are not currently identified, you may insert TBD in the cell titled, Name and Address of Proposed Subcontractor(s).

Name and Address of Proposed Subcontractor(s)	Portion of Work	Estimated \$ Value of Work

## MTA CONTRACTOR RESPONSIBILITY FORM

### 6. PRIOR MTA EMPLOYEES

List all employees of the Contractor who are or have been MTA or any MTA subsidiary or affiliate employees who were involved on behalf of Contractor or any subcontractor (including but not limited to Significant Subcontractors) with the preparation of the bid/proposal for the Contract or would be involved in the performance of the Contract if it is awarded to Contractor.

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

Previously or currently employed by: (check as appropriate)

MTA ☐      NYCT ☐      MaBSTOA ☐      SIRTOA ☐      MNR ☐      LIRR ☐  
TBTA ☐      MTAC&D ☐      MTA BC ☐

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

Previously or currently employed by: (check as appropriate)

MTA ☐      NYCT ☐      MaBSTOA ☐      SIRTOA ☐      MNR ☐      LIRR ☐  
TBTA ☐      MTAC&D ☐      MTA BC ☐

Contractors and subcontractors are reminded that Section 73 of the Public Officers Law and the MTA Vendor Code of Ethics place strict limitations on former MTA employees being employed by or receiving compensation from MTA Contractors, Subcontractors, bidders or proposers.

### 7. FINANCIAL INFORMATION

*(This section is not applicable to Significant Subcontractors.)*

Contractor confirms that it has submitted certified copies of its financial statements for the past three (3) fiscal years and the Financial Responsibility Data Workbook to the Document Repository. If Contractor does not have certified financial statements, it should provide financial statements sworn to by Contractor's Chief Financial Officer, along with any other relevant information that will assist the MTA in evaluating and determining whether the contractor has sufficient financial resources to perform the Contract.

## MTA CONTRACTOR RESPONSIBILITY FORM

### CERTIFICATION

Contractor/Subcontractor certifies that the responses contained in the Contractor Responsibility Form, and the responses contained in the Contract Specific Responsibility Form, are true, accurate and complete as of the date of this submission and authorizes MTA to verify any such information through a background check or other method(s) that the MTA deems appropriate.

Contractor/Subcontractor acknowledges and understands that its responses to this Contractor Responsibility Form and its responses to the Contract Specific Responsibility Form, will be used for the purpose of determining Contractor's/Subcontractor's responsibility in connection with an MTA contract or change order award, and that Contractor's/Subcontractor's failure or refusal to provide the information and authorization requested may impact or otherwise prevent Contractor/Subcontractor from being deemed eligible to receive the prospective contract or change order award.

Signatory certifies that they are duly authorized by the Contractor/Subcontractor to sign this Contractor Responsibility Form on the Contractor's/Subcontractor's behalf and to bind the Contractor/Subcontractor to the responses contained in this document and in the Contract Specific Responsibility Form.

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

Name (print): \_\_\_\_\_ Title: \_\_\_\_\_

Information received by the MTA in connection with this form will be maintained by the agency in accordance with all applicable legal requirements, including those contained in the NYS Personal Privacy Protection Law

## MTA CONTRACTOR RESPONSIBILITY FORM

### CERTIFICATION OF NO CHANGE

(If applicable, complete and submit the original, signed Certification of No Change and attach a copy of the previously submitted Responsibility Form.)

1. I am \_\_\_\_\_ of \_\_\_\_\_.  
(Print name and title) (Print name of firm)
2. The firm is the Contractor/Subcontractor for Contract \_\_\_\_\_. I am duly authorized to sign this Certification of No Change on behalf of said firm and duly signed this document pursuant to said authorization.
3. The Contractor/Subcontractor previously submitted a MTA [AGENCY HERE] Responsibility Form within one (1) year prior to the date hereof, to NYCT.
4. Attached is an accurate and true copy of such previously submitted MTA [AGENCY HERE] Responsibility Form.
5. I hereby certify that there has been no change in the information specified on such attached Responsibility Form, except as follows: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
6. I acknowledge and understand that the previously submitted MTA [AGENCY HERE] Responsibility Form includes provisions which are deemed included in the Contract if awarded to the firm.

Signatory certifies that they are duly authorized by the Contractor/Subcontractor to sign this Responsibility Form on the Contractor's/Subcontractor's behalf and to bind the Contractor/Subcontractor to the responses contained in this document.

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

Date: \_\_\_\_\_

Name (print): \_\_\_\_\_

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

**Attachment D**  
**OMNIBUS PROCUREMENT ACT PROVISIONS**

**IMPORTANT NOTICE TO BIDDERS/PROPOSERS,  
INCLUDING QUESTION AND INCORPORATED CONTRACT PROVISIONS,  
NEW YORK OMNIBUS PROCUREMENT ACT (CHAPTER 844 of 1992)  
ENCOURAGING THE USE OF NEW YORK STATE BUSINESS  
ENTERPRISES IN CONTRACT PERFORMANCE**

1. Definition: For purposes of this notice, a “New York State Business Enterprise” means a business enterprise consisting of a person acting as a sole proprietorship, or a legal entity such as but not limited to a corporation, limited liability company, or partnership, which offers for sale or lease or other form of exchange, goods which are sought by a New York State public authority or public benefit corporation, which are substantially manufactured, produced or assembled in New York state, or services which are sought by the public authority or public benefit corporation and which are substantially performed within New York State.

2. It is the policy of New York State to maximize opportunities for the participation of New York State Business Enterprises, including minority and women-owned business enterprises, as bidders/proposers, subcontractors, and suppliers. New York State Business Enterprises that participate as contractors, subcontractors and suppliers in the contracts of the Metropolitan Transportation Authority and its affiliated and subsidiary agencies (collectively, “MTA”) strongly contribute to the economies of the State and the nation. In recognition of this contribution, bidders/proposers for this contract are strongly encouraged and expected to consider New York State Business Enterprises in the fulfillment of the requirements of this contract. Such participation may be as subcontractors, suppliers, or other supporting roles. MTA, to the maximum extent practicable and consistent with legal requirements, desires to achieve participation of qualified and responsible New York State Business Enterprises in purchasing commodities and services including technology. Furthermore, bidders/proposers are reminded that they must continue to utilize small, minority and women-owned businesses, consistent with current State law. Utilizing New York State Business Enterprises in MTA contracts will help create more private sector jobs, rebuild New York’s infrastructure and maximize economic activity to the mutual benefit of contractors, participating New York State Business Enterprises, the public sector and the people of the State of New York. Public procurements can drive and improve the State’s economic engine through promotion of the participation of New York State Business Enterprises by MTA contractors. MTA, therefore, strongly encourages bidders/proposers to use New York State Business Enterprises in MTA contracts. The potential participation by all kinds of New York State Business Enterprises in MTA contracts will deliver great value to the MTA, the State and its taxpayers.

3. A bidder/proposer responding to this solicitation may answer the question below in its bid or proposal to demonstrate its voluntary commitment to the use of New York State Business Enterprises<sup>1</sup>:

Does bidder/proposer anticipate that one or more New York State Business Enterprises will be used in the performance of this contract?

Yes: ☐

No: ☐

**Page 1 of 3**

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<sup>1</sup> While support of New York State Business Enterprises is encouraged, how a bidder/proposer responds to this question will have no impact on the award of the subject procurement (except for certain rolling stock procurements where the law expressly permits New York State content to be part of the evaluation criteria for award).



If the answer is yes, please identify in the bid/proposal the New York State Business Enterprises that the bidder/proposer anticipates will be used, to the extent known, and attach identifying information about each such New York State Business Enterprise.

4. The bidder/proposer that is awarded and enters into the contract (the “Contract”) that is the subject of this solicitation (“Contractor”) agrees by so entering into such contract to the following, which is incorporated into and made a part of the Contract:

A. Contractor agrees to furnish to MTA information regarding its use of New York State Business Enterprises in the performance of this Contract, including by reporting to MTA, in response to MTA’s request, whether New York State Business Enterprises are being, have been or are anticipated to be, used in the performance of the Contract, and, if so, by providing identifying information about each such New York State Business Enterprise.

5. If the Contract is in an amount of \$1 million or more (a “Large Contract”) the following additional provisions are incorporated into and are made a part of the Large Contract:

A. Contractor shall (i) upon entering into the Large Contract provide to MTA documentation of its effort to encourage use of New York State Business Enterprises and (ii) thereafter also report the extent of such use for each such New York State Business Enterprise (a) in response to a request of the MTA project manager and (b) at the time of Contract close-out.

B. Contractor is required to make reasonable efforts to encourage the participation of New York State Business Enterprises and suppliers and subcontractors on such Large Contract. Contractor will be required to document its efforts to encourage the participation of New York State Business Enterprises as suppliers and subcontractors by showing it has (i) solicited bids/proposals, in a timely and adequate manner from New York State Business Enterprises including certified minority-owned business, (ii) contacted the New York State Dept. of Economic Development to obtain listings of New York State Business Enterprises, (iii) placed notices for subcontractors and suppliers in newspapers, journals or other trade publications distributed in New York State, or (iv) participated in bidder/proposer outreach conferences. Documentation of such efforts of the Contractor must be produced to the MTA upon MTA’s request. If the Contractor determines that New York State Business Enterprises are not available to participate on the contract as subcontractors or suppliers, the Contractor shall provide a statement to the MTA indicating the method by which such determination was made. If the Contractor does not intend to use subcontractors, the Contractor shall provide a statement to MTA verifying such.

C. Contractor must comply with the Federal Equal Opportunity Act of 1972 (P.L. 92-261), as amended.

D. Contractor agrees to make reasonable efforts to provide notification to New York State residents of employment opportunities on this contract through listing any such positions with the Division of Employment and Workforce Solutions of the New York State Department of Labor, or providing such notification in such manner as is consistent with existing collective bargaining contracts or agreements. Contractor agrees to document these efforts and to provide said documentation to the MTA or the State, upon request.

E. Contractor acknowledges that New York State may seek to obtain offset credits from foreign counties as a result of this contract and agrees to cooperate with the State in these efforts.

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

Online by going to the following address and signing up for a free account with the New York State Contract Reporter: <https://www.nyscr.ny.gov/nysBusinessReg.cfm>.

By telephoning the New York State Department of Economic Development, Division of Small Business at 518-292-5266.

6. A directory of New York State certified minority and women-owned business enterprises is available:

Online at <http://esd.ny.gov/MWBE/directorySearch.html>

By contacting the Empire State Development's Division of Minority and Women's Business Development:

Albany, NY 12245  
(518) 292-5250

or

633 Third Avenue, 33rd Floor  
New York, NY 10017  
(212) 803-2414

By contacting the MTA's Department of Diversity and Civil Rights at 646-252-1385 for an appointment to inspect the directory at 2 Broadway, 16<sup>th</sup> floor, New York, NY 10004. At your request, the Department of Diversity and Civil Rights will assist a firm in reviewing the directory.

7. Contractors that want to be informed by e-mail of future contracting opportunities that may be of interest to them that are advertised in the New York State Contract Reporter, may sign up for a free account by going to <https://www.nyscr.ny.gov/contracts.cfm>

8. Contractors that want to sign up, at no charge, to be included in the New York State Business Registry, which may be used by various New York State public agencies and by prime contractors who may contact the Contractor's business directly about subcontracting opportunities, may go to <https://www.nyscr.ny.gov/nysBusinessReg.cfm>. Requests for listing in this registry may be made by:

i) a New York State Business Enterprise that is not currently listed in this registry; and

ii) a business in any other state or country provided the state or country in which the company is located does not engage in discriminatory purchasing practices. These discriminatory jurisdictions are identified within the Business Registry application.

*Rev.*  
*6/2/2014*

METROPOLITAN TRANSPORTATION AUTHORITY  
STATEMENT OF RULES AND REGULATIONS  
WITH RESPECT TO PROMPT PAYMENT  
[Effective April 30, 1988]

PART 1091

(Statutory Authority: Public Authorities Law §2880)

Section 1002.1 Policy. This statement is intended to establish rules and regulations as required under Section 2880 of the Public Authorities Law regarding prompt payment. Subject to the conditions and exceptions set forth in Section 2880 and this Part, in the event any proper invoice is not paid promptly, the applicable authority shall be liable for the payment of interest on late payments. This policy shall apply to all contracts entered into on or after April 30, 1988.

Section 1002.2 Definitions. As used in this Part, the following terms shall have the following meanings unless otherwise specified:

- (a) Corporation means the Metropolitan Transportation Authority, the New York City Transit Authority, the Manhattan and Bronx Surface Transit Operating Authority, the Staten Island Rapid Transit Operating Authority, the Long Island Rail Road Company, the Metro-North Commuter Railroad Company, the Metropolitan Suburban Bus Authority, the Triborough Bridge and Tunnel Authority, or the Metropolitan Transportation Authority Card Company, as the case may be.
- (b) Contract means an enforceable agreement entered into by a contractor and the Corporation, including but not limited to written contracts and purchase orders, written or oral requests for goods or services, including public utility services and lease agreements.
- (c) Contractor means any person, partnership, firm, corporation or association, including public utilities and not-for-profit organizations:
  - (1) selling materials, equipment, or supplies or leasing property or equipment to the corporation; or
  - (2) constructing, reconstructing, rehabilitating or repairing buildings, highways or other improvements for, or on behalf of, the corporation; or
  - (3) rendering or providing services to the corporation pursuant to a contract;
- (d) Designated payment office means the office designated by the corporation to which a proper invoice is to be submitted by a contractor.
- (e) Payment date means the date on which a check for payment pursuant to a contract is dated.
- (f) Proper invoice means a written request for a contract payment that is submitted by a contractor to the designated payment office setting forth the description, price, and quantity of goods, property or services delivered or rendered, in such form and supported by such other substantiating documentation as the Corporation may require.
- (g) Receipt of an invoice ("ROI") means:
  - (1) the date on which a proper invoice is actually received in the designated payment office; or
  - (2) the date on which the corporation receives the purchased goods, property or services covered by the proper invoice, whichever is later; or
  - (3) in regard to progress payments on capital construction projects, the date on which there is concurrence between the contractor and the project manager or chief engineer or their designee with respect to the preliminary estimate of the value of work performed during the billing period; or

- (4) in regard to final payments on capital construction projects, the date on which the contract work has been accepted as completed by the project manager or chief engineer of the corporation or their designee; or
- (5) in regard to the deposit or submission by a contractor of bonds, notes, securities or other collateral in substitution for contract amounts retained by the corporation, as permitted by statute or contract, the date the proper bonds, notes, securities or other collateral are deposited or submitted.
- (h) Setoff means the reduction by the corporation of a payment due to a contractor by an amount equal to the amount of an unpaid legally enforceable debt owed by the contractor to the corporation, and shall include, but not be limited to, unused credit advices received from the contractor, liquidated damages under the contract, contractor liability for personal injury, property damage or other loss, damages for default regarding a proposal, or for breach of contract, as well as for any extra contractual claim for liability or damages of any nature.

### **INTEREST ELIGIBILITY**

#### **1002. Eligible Payments.**

- (a) With the exception of the payments described in sub-division (b) of this section, every payment of funds to a contractor pursuant to a contract, and every payment of interest pursuant to this Part, is eligible for interest whenever the payment is not made by the required payment date, unless failure to make such payment is the result of a lien, attachment or other legal process against the money due the contractor. Notwithstanding the foregoing, interest shall not be paid that amounts to less than \$10.00.
- (b) Payments are not eligible for interest under this Part when they are due and owing by the corporation;
  - (1) under the Eminent Domain Procedure Law;
  - (2) as interest allowed on judgments rendered by a court, except to the extent that interest is incurred under this Part prior to the date of the notice of intent to file a claim, the date of a notice of claim, or the date on which a legal action for the payment of such interest is commenced, whichever occurs first;
  - (3) to the Federal government; to any State agency or its related instrumentalities; to any duly constituted unit of local government, including but not limited to counties, cities, towns, villages, school districts, special districts or any of their related instrumentalities; to any public authority or public benefit corporation; or to employees of the corporation when acting in, or incidental to, their public employment capacity; and
  - (4) in situations where the corporation exercises a legally authorized setoff against all or part of the payment due the contractor.

### **INTEREST CALCULATION**

1002. Required Payment Date. (a) Effective through June 30, 1989, the required payment date shall be 45 calendar days after the ROI date.

1002.4 (b) Effective July 1, 1989, the required payment date shall be 30 calendar days, excluding legal holidays, after the ROI date.

#### **1002.5 Receipt of Invoice Date:**

- (a) Effective through June 30, 1989. Except where adjusted pursuant to sections 1002.8, 1002.9, 1002.10, 1002.11, 1002.12 or 1002.13 of this Part, the ROI date shall be:

- (1) in the case of final payments on capital construction contracts, 30 calendar days after the date on which the contract work has been accepted by the project manager or chief engineer of the corporation or their designee;
  - (2) in the case of contracts which require that the contractor be paid at predetermined intervals, other than leases, licenses or permits relating to the use of real property, the 45th calendar day prior to each payment date specified in the contract, or the date upon which a proper invoice, if required, is submitted, whichever date is later; or
  - (3) in the case of periodic payments pursuant to leases, licenses or permits relating to the use of real property for which an invoice is not required by the instrument, the 45th day prior to the last day under the instrument on which payment may be made without penalty, or the 45th day prior to the 20th day after the payment due date where the instrument does not provide for a penalty upon late payment.
  - (4) in the case of interest payments required to be paid pursuant to this Part, the payment date for the late payment as to which interest is due.
  - (5) in all other cases, the date of the receipt of a proper invoice as defined in section 1002.2(g) of this Part.
- (b) The ROI date determined in accordance with subdivision (a) of this section shall be adjusted in the situations described in sections 1002.8, 1002.9, 1002.10, 1002.11, 1002.12 and 1002.13 of this Part, in accordance with the procedures outlined in those sections.
- (c) Effective July 1, 1989. Except where adjusted pursuant to sections 1002.8, 1002.9, 1002.10, 1002.11, 1002.12 or 1002.13 of this Part, the ROI date shall be:
- (1) in the case of final payments on capital construction contracts, 30 calendar days after the date on which the contract work has been accepted by the project manager or chief engineer of the corporation or their designee;
  - (2) in the case of contracts which require that the contractor be paid at predetermined intervals, other than leases, licenses or permits relating to the use of real property, the 30th calendar day prior to each payment date specified in the contract, or the date upon which a proper invoice, if required, is submitted, whichever date is later; or
  - (3) in the case of periodic payments pursuant to leases, licenses or permits relating to the use of real property for which an invoice is not required by the instrument, the 30th day prior to the last day under the instrument on which payment may be made without penalty, or the 30th day prior to the 20th day after the payment due date where the instrument does not provide for a penalty upon late payment;
  - (4) in the case of interest payments required to be paid pursuant to this Part, the payment date for the late payment as to which interest is due;
  - (5) in all other cases, the date of the receipt of a proper invoice as defined in section 1002.2(g) of this Part.
- (b) The ROI date determined in accordance with subdivision (a) of this section shall be adjusted in the situations described in sections 1002.8, 1002.9, 1002.10, 1002.11, 1002.12 and 1002.13 of this Part, in accordance with the procedures outlined in those sections.

1002.6 Interest Eligibility. (a) Effective through June 30, 1989, interest shall be calculated and paid at the daily rate pursuant to section 1002.7 of this Part on all interest-eligible payments, as determined in accordance with section 1002.3 of this Part, when the payment date is more than 45 calendar days after the ROI date.

(b) Effective July 1989, interest shall be calculated and paid at the daily rate pursuant to section 1002.7 of this Part on all interest-eligible payments, as determined in accordance with section 1002.3 of this Part, when the payment date is more than 30 calendar days, excluding legal holidays, after the ROI date.

#### 1002.7 Computation of Interest Payment.

- (a) Interest under this Part shall be computed at the daily rate in effect on the date the interest is paid, as set by the State Tax Commission for corporate taxes pursuant to section 1096(e)(1) of the Tax Law.
- (b) Interest payments on amounts due to a contractor pursuant to this Part shall be paid to the contractor for the period beginning on the day after the required payment date and ending on the payment date.
- (c) In the case of interest payments on amounts due to a contractor pursuant to this part under a lease, license or permit in relation to the use of real property, where the instrument provides for a penalty for late payment, the corporation shall pay the contractor the greater of the interest the contractor would be entitled to pursuant to this Part, or the penalty provided for under the instrument, but not both.
- (d) In no event shall interest accrue beyond the date of a notice of intention to file a claim, the date of a notice of a claim, or the date commencing a legal action for the payment of such interest, whichever occurs first.

#### ADJUSTMENT OF ROI DATE

#### 1002.8 Inspection or Audit.

- (a) The ROI date shall be adjusted in accordance with subdivision (b) or (c) of this section whenever, in accordance with specific provisions of statute, regulation or the contract, payment must be preceded by an inspection period or by an audit to determine the resources applied or used by a contractor in fulfilling the terms of the contract or otherwise to verify the work, goods or services billed for were provided in accordance with the contract.
- (b) Except as provided in subdivision (c) of this section, where a contract provides for an inspection or audit period, the ROI date shall be the original ROI date increased by the lesser of:
  - (1) the number of days provided for the inspection or audit; or
  - (2) the number of days actually utilized for the inspection or audit; provided, however, that where the audit or inspection period began prior to the date of receipt of an invoice, the ROI date shall be the date that the required inspection or audit has been completed, or the date that the statutory, regulatory or contractual inspection or audit period ends, whichever date is earlier, but in no event shall the ROI date be earlier than the date of the receipt of an invoice as defined in section 1002.2(g) of this Part.
- (c) Whenever in the course of an audit or inspection as described in subdivision (a) of this section, the corporation determines that there is a defect in the delivered goods, property or service, or defects in the invoice, or suspected improprieties of any kind, the Corporation shall, no later than the expiration of the statutory or contractual audit or inspection period, notify the contractor of the defect or impropriety. In such case, the ROI date shall be the date that the corrected invoice, or goods or services, are delivered or provided, or the date that the impropriety is resolved, except where the corporation has failed to notify the contractor of such defect or suspected impropriety prior to the expiration of the audit or inspection period. In such case, the ROI date shall be the ROI date as determined in accordance with the preceding sentence, reduced by the number of days after the expiration of the audit or inspection period which the agency took to notify the contractor of the defect or suspected impropriety.

#### 1002.9 Lack of Appropriation or Funds.

- (a) The ROI date shall be determined in accordance with subdivision (b) of this section whenever the necessary Federal, State, or local government appropriation or action required to authorize payment has yet to be enacted or taken or the funds have not been released.

- (b) (1) Except in the situations covered by paragraph (2) of this subdivision, the ROI date shall be the effective date of the required appropriation, action or release of funds.
- (2) Where the ROI date would otherwise be determined in accordance with section 1002.5(a)(2) of this Part and the appropriation or action to authorize payment is not in effect on the payment date specified in the contract or the funds have not been released, the ROI date shall be the ROI date determined in accordance with section 1002.5(c)(2) of this Part increased by the number of days between the payment date specified in the contract and the date the appropriation or action is effective or the funds are released.

#### 1002.10 Government Review of Invoice.

- (a) The ROI date shall be determined in accordance with subdivision (b) of this section whenever a proper invoice must be examined by the Federal, State or a local government prior to payment or whenever payment of an invoice must be processed by an entity, including but not limited to a government agency or public authority that is not under the corporation's control.
- (b) The ROI date shall be the original ROI date increased by a number of days equal to the number of days between the date that the corporation transmits the invoice to the Federal, State or local government for examination and the date that the corporation receives the approved invoice from the government entity following its review or the number of days between the date that the corporation submits the invoice for payment to an entity not under its control and the date on which that entity pays the invoice.

#### 1002.11 Noncompliance with Contract.

- (a) The ROI date shall be determined in accordance with subdivision (c) of this section whenever the goods or property have not been delivered or the services have not been rendered by the contractor in compliance with the terms or conditions of the contract, including but not limited to over or undershipment of goods.
- (b) The corporation shall notify the contractor in what respect the delivered goods or the rendered services are not in compliance with the contract. The notice shall further inform the contractor of what action the corporation requires by the contractor in order to rectify the areas of noncompliance.
- (c) The ROI date shall be the original ROI date increased by a number of days equal to the number of days between the date that the agency sends a written notice to the contractor that the delivered goods or the rendered services are not in compliance with the contract and the date that the areas of noncompliance are resolved to the corporation's satisfaction.

#### 1002.12 Capital Construction Contracts.

- (a) The ROI date shall be adjusted whenever, in the case of any payments on capital construction contracts, the corporation's project manager or chief engineer or their designee determines that the contractor has failed to properly submit the necessary documents and other materials prescribed by or provided for in the contract specifications, terms and conditions, or requirements, or by any applicable local, State and Federal law or regulation, in order to enable the Corporation to process the payment properly and expeditiously.
- (b) The corporation's project manager or chief engineer or their designee shall send written notice to the contractor of his failure to submit the necessary documents and materials. The notice shall indicate all documents and materials required.
- (c) The ROI date shall be the original ROI date increased by the number of days beginning on the date that the corporation's project manager or chief engineer or their designee sends written notice to the contractor of his failure to submit the necessary documents and materials and ending on the date that the corporation receives the necessary documents and materials.

#### 1002.13 Notice of Defects.

- (a) The corporation shall have 15 calendar days after receipt of an invoice at its designated payment office to notify the contractor of (1) defects in the delivered goods, property or services, (2) defects in the invoice, or (3) suspected improprieties of any kind.
- (b) Except as provided in subdivision (c) of this section, when the corporation notifies a contractor of such defects or suspected improprieties and the contractor thereafter submits a corrected invoice or delivers corrected goods or services, the ROI date shall be the date upon which the corrected invoice or corrected goods or services are received by the corporation. If a corrected invoice or corrected goods or services are not required, the ROI date shall be the date upon which the corporation determines that the suspected improprieties have been resolved.
- (c) If the corporation fails to notify a contractor of such defects or suspected improprieties within 15 calendar days of receipt of an invoice, the ROI date, as determined by subdivision (b) of this section, shall be adjusted to an earlier date by the number of days equal to the days in excess of 15 that the corporation took after receipt of an invoice to notify the contractor of the defects or suspected improprieties.

### MISCELLANEOUS

1002.1 Sources of Funds. For interest payments required by this Part covering invoices on purchased goods, property or services which are other than capital in nature, the corporation may use operating revenues, State and local operating assistance funds, State and local tax subsidies, investment income, and any other sources of operating funds which are or may become available for such purpose. For interest payments required by this Part covering invoices on purchased goods, property or services which are of a capital nature, the corporation may use any available governmental capital appropriations, Triborough Bridge and Tunnel Authority Investment Income, MTA Investment Income, and any other sources of capital funds which are or may become available for such purpose.

#### 1002.15 No Waiver or Estoppel.

- (a) No acceptance or other certificate given by the corporation under this Part or the payment of interest, shall be construed to waive or estop the corporation from asserting any claim or right relating to any defect or nonconformity in any goods, work or services, whether patent or latent, regardless of when discovered.
- (b) No obligation or liability for interest, nor the actual payment of any such interest under this Part, shall be construed as indicating or implying that the contractor's performance relating to such payment was in all respects satisfactory, acceptable, proper or in conformance with the contract documents, and the fact that the corporation may have paid or be obligated to pay such interest, shall not preclude the corporation from later determining that the work performed or goods delivered, as the case may be, was not satisfactory or acceptable or proper or in conformance with the contract.

#### 1002.16 Review.

- (a) Any determination made by the corporation pursuant to this Part that prevents the commencement of or interrupts the time in which interest will be paid shall be subject to administrative review. A contractor aggrieved by any such determination of the corporation shall, within 30 calendar days of the date of the determination or the payment of the invoice, whichever is later, submit a notice of intention to make a claim for interest in writing to the comptroller of the corporation. The notice of intention to make a claim for interest shall include an identification of the contract, by date and number, under which the claim is made, the date on which a proper invoice was submitted, or on which the goods or services were delivered, or on which payment was otherwise due, the reason given by the corporation, if any, for why commencement of the time in which interest was to be paid was prevented or interrupted, and the facts and circumstances which, in the contractor's opinion, show that the commencement of the time in which interest was to be paid should not have been prevented or interrupted.



- (b) A notice of intention to make a claim for interest under this section must be received by the comptroller of the corporation no later than thirty days from the determination of the corporation being challenged or the payment of the invoice, whichever is later. Within 30 calendar days of timely receipt of a proper and complete notice of intention to submit a claim for interest, the comptroller of the corporation shall either deny the claim or grant the claim in whole or in part. If the comptroller grants the claim in whole or in part, the corporation shall, within 7 calendar days, excluding legal holidays, pay the contractor the additional interest to which he is entitled. A failure by the comptroller to rule on a claim within this section within 30 calendar days shall be deemed a denial of such claim.
- (c) A determination by the comptroller of the corporation adverse to the contractor either in whole or in part shall be subject to judicial review in a proceeding pursuant to article 78 of the Civil Practice Law and Rules. No determination by the corporation under this Part which has not first been reviewed by the comptroller of the corporation pursuant to this section shall be subject to judicial review.

Section statutory authority: Civil Practice Law & Rules, § A78

1002.1 Recovery of Interest. In any case where the corporation has paid interest under this Part and later determines that the interest was wrongly or incorrectly paid, whether because of a mistaken calculation of delay in payment or of interest due, or because the payment made, or any part of it, was not properly due to the contractor for any reason, or because of any other circumstance or state of facts, the corporation may recover the interest wrongly or incorrectly paid by means of a demand to the contractor for the repayment of the interest or a setoff against future payments to the contractor or by any other lawful means including a court action or proceeding.

## **ATTACHMENT F**

### **COMPLIANCE WITH NEW YORK STATE FINANCE LAW SECTIONS 139-j AND 139-k (THE “LOBBYING LAW”)**

All procurements by the Authority in excess of \$15,000 annually, are subject to New York State’s State Finance Law Sections 139-j and 139-k, effective January 1, 2006 (“Lobbying Law”).

Pursuant to the Lobbying Law, all “contacts” (defined as oral, written or electronic communications with the Authority intended to influence a procurement) during a procurement must be made with the designated Point of Contact only. Exceptions to this rule include written questions during the bid process, communications with regard to protests, contract negotiations and RFP conference participants. Nothing in the Lobbying Law inhibits any rights to make an appeal, protest or complaint under existing administrative or judicial procedures.

Violations of the policy regarding permissible contacts must be reported to the appropriate Authority officer and investigated accordingly. First violation may result in a determination of non-responsibility and ineligibility for award to the violator and its subsidiaries, affiliates and related entities. The penalty for a second violation within four (4) years is ineligibility for bidding/proposing on a procurement and/or ineligibility from being awarded any contract for a period of four (4) years. The Authority will notify the New York State Office of General Services (“OGS”) of any determinations of non-responsibility or debarments due to violations of the Lobbying Law. Violations found to be “knowing and willful” must be reported to the Authority’s Executive Director and OGS.

Moreover, the statutes require the Authority to obtain certain affirmation and certifications from bidders and proposers. This Attachment F contains the forms to comply, with additional information and instructions. The forms, which are attached hereto, must be completed by the Bidder/Proposer in order to comply with the Lobbying Law:

- Form 1 - Disclosure of Prior Non-Responsibility Determinations
- Form 2 - Bidder’s/Proposer’s Affirmation and Certification

**Note: Failure to complete and return the forms with your Bid/Proposal may cause the Bidder/Proposer to be deemed non-responsible.**

**COMPLIANCE WITH NEW YORK STATE  
FINANCE LAW, SECTIONS 139-j AND 139-k  
(THE "LOBBYING LAW")**

Form 1

**DISCLOSURE OF PRIOR NON-RESPONSIBILITY DETERMINATIONS**

**Additional Information and Instructions:**

New York State Finance Law §139-k(2) obligates the Authority to obtain specific information regarding prior non-responsibility determinations. This information must be collected in addition to the information that is separately obtained pursuant to State Finance Law §163(9). In accordance with State Finance Law §139-k, an offerer must be asked to disclose whether there has been a finding of non-responsibility made within the previous four (4) years by any Governmental Entity due to: (a) a violation of State Finance Law §139-j or (b) the intentional provision of false or incomplete information to a Governmental Entity.

As part of its responsibility determination, State Finance Law §139-k(3) mandates consideration of whether an offerer fails to timely disclose accurate or complete information regarding the above non-responsibility determination. In accordance with law, no procurement contract shall be awarded to any offerer that fails to timely disclose accurate or complete information under this section, unless the factual elements of the limited waiver provision can be satisfied on the written record.

Name of Bidder/Proposer: \_\_\_\_\_

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

Name and Title of Person Submitting this Form: \_\_\_\_\_

1. Has any governmental entity\* made a finding of non-responsibility regarding the Bidder/Proposer in the previous four years? No ☐ Yes ☐

If yes, please answer the following questions:

2. Was the basis for the finding of the Bidder's/Proposer's non-responsibility due to a violation of State Finance Law §139-j? No ☐ Yes ☐

3. Was the basis for the finding of Bidder's/Proposer/s non-responsibility due to the intentional provision of false or incomplete information to a governmental entity? No ☐ Yes ☐

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

- Governmental Entity: \_\_\_\_\_
- Year of Finding of Non-responsibility: \_\_\_\_\_
- Basis of Finding of Non-responsibility: \_\_\_\_\_

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

(Add additional pages as necessary)

5. Has any governmental entity terminated or withheld award of a procurement contract with the Bidder/Proposer due to the intentional provision of false or incomplete information?

No ☐ Yes ☐

6. If you answered yes to Question 5, please provide details below:

- Governmental Entity: \_\_\_\_\_
- Year of Finding of Non-responsibility: \_\_\_\_\_
- Basis of Finding of Non-responsibility: \_\_\_\_\_

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

(Add additional pages as necessary)

**Offeror certifies that all information provided to the Authority with respect to State Finance Law Section 139-k is complete, true and accurate.**

**By:** \_\_\_\_\_ **Date:** \_\_\_\_\_

**Signature**

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

\*A “governmental entity” is: (1) any department, board, bureau, commission, division, office, council, committee or officer of New York State, whether permanent or temporary; (2) each house of the New York State Legislature; (3) the unified court system; (4) any public authority, public benefit corporation or commission created by or existing pursuant to the public authorities law; (5) any public authority or public benefit corporation, at least one of whose members is appointed by the governor or who serves as a member by virtue of holding a civil office of the state; (6) a municipal agency, as that term is defined in paragraph (ii) of subdivision (s) of section one-c of the Legislative Law; or (7) a subsidiary or affiliate of such a public authority. (SFL §139-j, paragraph 1.a.)

**COMPLIANCE WITH NEW YORK STATE  
FINANCE LAW, SECTIONS 139-j AND 139-k  
(THE "LOBBYING LAW")**

Form 2

**BIDDER'S/PROPOSER'S AFFIRMATION AND CERTIFICATION**

**By signing below, the Bidder/Proposer:**

- a) Affirms that the Bidder/Proposer understands and agrees to comply with the policy regarding permissible contacts as required by New York State Finance Law § 139-j and §139-k.
- b) Certified that all information provided to the Authority with respect to State Finance Law §139-j and §139-k is complete, true and accurate.

By: \_\_\_\_\_  
(Signature of Person Certifying)

Date: \_\_\_\_\_

Print Name: \_\_\_\_\_

Print Title: \_\_\_\_\_

Bidder/Proposer or  
Contractor/Consultant: \_\_\_\_\_  
(Full Legal Name)

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

Business  
Telephone Number: \_\_\_\_\_

**THE AUTHORITY'S RIGHT TO TERMINATE**

**The Authority reserves the right to terminate a Contract in the event it is found that the certification filed by the Contractor/Consultant, as Bidder/Proposer, in accordance with New York State Finance Law §139-k was intentionally false or intentionally incomplete. Upon such finding, the Authority may exercise its termination right by providing written notification to the Contractor/Consultant in accordance with the written notification terms of the Contract.**

## **ATTACHMENT G**

### **METROPOLITAN TRANSPORTATION AUTHORITY VENDOR CODE OF ETHICS**

#### **PROPOSER'S CERTIFICATION OF COMPLIANCE**

The Metropolitan Transportation Authority has adopted a Vendor Code of Ethics (the "Code"), which is applicable to all Vendors, as defined by the Code, involved in the procurement process for the award and performance of this Contract. Additional information concerning the MTA Vendor Code of Ethics is contained in the contract documents. All Vendors involved in this Request for Proposals ("RFP") and during the performance of any resultant contract are subject to the Code, which is available for Proposer's immediate review on the MTA website at [www.mta.info/mta/procurement/vendor-code.htm](http://www.mta.info/mta/procurement/vendor-code.htm). Accordingly, all Proposers must certify compliance with the Code.

#### **Proposer's Certification of Compliance with the Code**

Consistent with the terms of the MTA Code of Ethics, which are incorporated herein by reference, the undersigned Proposer hereby certifies that during the course of this RFP and any resultant Contract:

1. The Proposer has notice of all of the terms of the Code;
2. No gift, as defined by the Code, has been or will be offered to the Authority in connection with this RFP or any resultant contract;
3. No conflicts of interest exist or will exist;
4. All officers and personnel of the Proposer who have interacted or will interact with the Authority have been or will be provided a copy of the Code; and
5. The Proposer will obtain certifications similar to those made herein from all of its lower tier subcontractors, subconsultants and suppliers that the Proposer engaged or are being solicited for work under any contract resulting from this procurement. Receipt and retention of these lower tier certifications shall be subject to audit by the Authority.

By:

\_\_\_\_\_  
(Signature of Person Certifying)

\_\_\_\_\_  
(Date Signed)

Print Name:

Print Title:

Bidder/Proposer or

Contractor/Consultant:

\_\_\_\_\_  
(Full Legal Name)

Address:

Business Phone No.:

Rev.10/06

Boiler/CodeOfEthics/RFP/Attach.G.doc

## ATTACHMENT H

### IRAN DIVESTMENT ACT - CERTIFICATION

Pursuant to New York State Finance Law §165-a, Iran Divestment Act of 2012, the Office of General Services is required to post on its web site <http://www.ogs.ny.gov/about/regs/docs/ListofEntities.pdf> a list of persons who have been determined to engage in investment activities in Iran (“the List”), as defined in that Act. Under Public Authorities Law § 2879-c, Iranian Energy Sector Divestment, the Authority, may not enter into or award a Contract unless it obtains a certification from a Bidder, who shall check the box and make the certification in Subparagraph a, below, that they are not on the List. If that certification cannot be made, the Authority may consider entering into a Contract, on a case by case basis if the Bidder checks the box and makes the certification in Subparagraph b, below, that their Iran investment is ceasing.

For purposes of this provision, a person engages in investment activities in Iran if: (A) the person provides goods or services of twenty million dollars or more in the energy sector of Iran, including a person that provides oil or liquefied natural gas tankers, or products used to construct or maintain pipelines used to transport oil or liquefied natural gas, for the energy sector of Iran; or (B) the person is a financial institution that extends twenty million dollars or more in credit to another person, for forty-five days or more, if that person will use the credit to provide goods or services in the energy sector in Iran.

The Certification is as follows:

- ☐ **a. Certification that the Bidder is not on the List:** Each person, where person means natural person, corporation, company, limited liability company, business association, partnership society, trust, or any other nongovernmental entity, organization, or group, and each person signing on behalf of any other party, certifies, and in the case of a joint bid or proposal or partnership each party thereto certifies as to its own organization, under penalty of perjury, that to the best of its knowledge and belief that each person is not on the list created pursuant to paragraph (b) of subdivision 3 of section 165-a of the State Finance Law, or,
- ☐ **b. Certification that the Bidder’s investment in Iran is ceasing:** The person cannot make the certification in Subparagraph a, above, but asks the Authority to consider them for award of the Contract by certifying, under penalty of perjury, that the person’s investment activities in Iran were made before April 12, 2012; the person’s investment activities in Iran have not been expanded or renewed after April 12, 2012; and the person has adopted, publicized and is implementing a formal plan to cease its investment activities in Iran and to refrain from engaging in any new investments in Iran.

\_\_\_\_\_  
Signature/Date

\_\_\_\_\_  
Printed Name and Position

**ATTACHMENT I**  
**PUBLIC AUTHORITIES LAW SECTION 1269-g CERTIFICATION**

**IF THIS CONTRACT IS A PUBLIC WORKS CONTRACT INVOLVING THE EMPLOYMENT OF LABORERS, WORKMEN OR MECHANICS, THE CONTRACTOR AND ANY SUBCONTRACTOR(S) SHALL BE REQUIRED TO CERTIFY COMPLIANCE WITH NEW YORK STATE PUBLIC AUTHORITIES LAW SECTION 1269-G (REQUIREMENTS FOR CERTAIN AUTHORITY CONTRACTS AND RELATED SUBCONTRACTS) AS PROVIDED IN THIS ATTACHMENT I.**

1. Vendor shall comply with the requirements of Section 1269–g of the Public Authorities Law, as amended and supplemented, and with rules and regulations that the Metropolitan Transportation Authority (“MTA”), and any of its affiliates and/or subsidiaries may adopt pursuant to Section 1269–g(6).
2. No later than ninety (90) days from the effective date of this Contract, the Vendor shall file with the MTA a certification signed by an officer of Vendor and sworn to under penalties of perjury that Vendor has complied with Section 1269–g by posting and distributing the information specified in Section 1269–g(2) in the manner required by Section 1269–g(1). Such certification shall include a copy of the information that the Vendor posted and distributed and a description of how such information has been posted and distributed.
3. At such time as the MTA has posted on its public internet websites, currently [www.mta.info](http://www.mta.info), sample statements, displays and other materials that provide the information required by Section 1269-g, Vendor may use the MTA’s sample statements, displays and other materials in complying with Section 1269-g. Until the MTA has posted such information, it is Vendor’s responsibility to accurately and completely prepare and communicate the required information. The required information consists of the following:
  - a. The telephone numbers and addresses to report information of fraud or other illegal activity to the appropriate officers of the MTA inspector general and the Attorney General of New York;
  - b. A description in detail of conduct prohibited by Section 189 of the State Finance Law, and the role of that act in preventing and detecting fraud and abuse in work paid for by the MTA or with funds originating from the MTA;
  - c. A notice to prospective qui tam plaintiffs on how to file a qui tam action, including the necessity to contact private counsel skilled in filing such actions and of the potential for cash rewards in such actions based on the percentage of the funds recovered by the government; and
  - d. A description of the prohibitions on employer retaliation against persons who file or assist actions under Article 13 of the State Finance Law (the New York False Claims Act) pursuant to Section 191 of the State Finance Law, or who report illegal conduct that threatens the health or safety of the public pursuant to Section 740 of the labor law.
4. The Vendor shall insert into every first-tier subcontract, and require the insertion into all lower-tier Subcontracts, a provision requiring each subcontractor to comply with the requirements of Section 1269–g of the Public Authorities Law, as amended and supplemented, and with any statements, displays and other materials, and rules and regulations that the MTA may adopt pursuant to Section 1269–g (6) and requiring that, no later than ninety (90) days from the effective date of each subcontract, each subcontractor file with the Vendor a verified statement from such subcontractor certifying that such



subcontractor has complied with Section 1269–g by posting and distributing the information specified in Section 1269–g(2) in the manner required by Section 1269–g(1). The verified statement shall include a copy of the information that such subcontractor posted and distributed.

5. No later than ninety (90) days from the effective date of each subcontract of any tier, the Vendor shall file a certification with the MTA signed by an officer of subcontractor and sworn to under penalties of perjury certifying that such subcontractor has complied with Section 1269–g by posting and distributing the information specified in Section 1269–g (2) in the manner required by Section 1269–g(1). Such certification shall include a copy of the information that the subcontractor posted and distributed and a description of how that information has been posted and distributed.
6. Material compliance by the Vendor with these provisions of the Contract and with Section 1269–g shall be a material condition of payment. The Vendor shall insert into every first-tier subcontract, and require the insertion into all lower-tier subcontracts, a provision stating that material compliance by a subcontractor with Section 1269–g shall be a material condition of payment. Each request for payment submitted by the Vendor shall include a certification signed by an officer of Vendor and sworn to under penalties of perjury certifying that Vendor and every subcontractor has continued to comply with the requirements of Section 1269–g of the Public Authorities Law, as amended and supplemented, and with any statements, displays and other materials, and rules and regulations that the MTA may adopt pursuant to Section 1269–g (6).

**REQUIRED CERTIFICATION OF COMPLIANCE WITH PUBLIC AUTHORITIES LAW, S. 1269-G**

Failure of Vendor to submit this certification as required by the MTA may result in Default Event. By signing below, Vendor certifies compliance with Public Authorities Law Section 1269-g and that the statements made above are complete, true and accurate.

Vendor Name: \_\_\_\_\_

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

Date: \_\_\_\_\_

Print name of signatory: \_\_\_\_\_

Print title of signatory: \_\_\_\_\_

Business address of signatory: \_\_\_\_\_

Business phone number: \_\_\_\_\_

## **APPENDIX B**

### **AFFIRMATIVE ACTION/EEO REQUIREMENTS**

The Bidder agrees to the terms and conditions of non-discrimination as set forth within. The Bidder, as a precondition to entering into a valid and binding contract shall, during the performance of this contract, agree to the following:

- (a) The contractor will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability or marital status. The contractor will undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status. The contractor shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force on this contract. For these purposes, affirmative action shall apply in the areas of recruitment, employment, job assignment, promotion, upgradings, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation.
- (b) The contractor shall state in all solicitations or advertisements for employees that, in the performance of this contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.
- (c) At the request of the Authority, the contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union, or representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of the contractor's obligations herein.
- (d) After an award of this contract, the contractor shall submit to the Authority a workforce utilization report, in a form and manner required by the Authority, of the work force actually utilized on this contract, broken down by specified ethnic background, gender, and Federal Occupational Categories or other appropriate categories specified by the Authority.
- (e) Prior to the award of this contract, the contractor shall submit an Equal Employment Opportunity (EEO) Policy Statement and an EEO-1 form to the Authority within the time frame established by the Authority. The contractor's EEO Policy Statement shall contain, but not necessarily be limited to, and the contractor, as a precondition to entering into this contract shall, during the performance of the contract, agree to the provisions set forth in paragraphs (a)-(c) above. The EEO-1 Form shall reflect contractor information on the ethnic background, gender, and Federal Occupational Categories of the employees to be utilized on this contract.

- (f) Within sixty (60) days of the execution of this Contract, the Contractor shall submit a staffing plan (Form Staffpln), in a form and manner required by the Authority, which shall contain information on employees projected to work on activities related to the contract. This information must be broken down by specified ethnic background, gender and related job titles.
- (g) For construction contracts, after the award of the contract, the contractor and all subcontractors shall submit on a monthly basis, in a form and manner required by the Authority, throughout the life of the contract, a Workforce Utilization Report. The report must detail the number of employees that worked on activities related to this contract. The information must be broken down by hours worked, specified ethnic background, gender, related job titles, and gross wages.
- (h) Except for construction contracts, after the award of the contract, the contractor and all subcontractors shall submit on a quarterly basis, in a form and manner required by the Authority, throughout the life of the contract, a Workforce Utilization Report. The report must detail the number of employees that worked on activities related to this contract. The information must be broken down by hours worked, specified ethnic background, gender, related job titles, and gross wages.
- (i) The provisions of this Appendix shall not apply to the extent the Contractor or a subcontractor has obtained a waiver from the Authority based on duplication or conflict with federal laws.
- (j) The contractor agrees to include the language of the provisions of paragraphs (a)-(i) above in every subcontract in such manner that the requirements of the provisions will be binding upon each subcontractor and each party to this contract as to work in connection with this contract, including the requirement that subcontractors and parties to this contract shall undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination and, when requested, provide to the contractor information on the ethnic background, gender, and Federal Occupational Categories of the employees to be utilized on this contract.

Attachments: Forms: - EEO-1; Staffing Plan; WF/Construction, incl. Instructions; WF/Commodities, Service and/or Consultant Firms, incl. Instructions.

Boiler/AA-EEO/Appendix B/Bidder.doc  
1.01.18

**METROPOLITAN TRANSPORTATION AUTHORITY**  
**Office of Civil Rights**

**EQUAL EMPLOYMENT OPPORTUNITY**  
**EMPLOYER INFORMATION REPORT EEO-1**

**Section A – TYPE OF REPORT**

1. Indicate by marking in the appropriate box the type of reporting unit for which this copy of the form is submitted (MARK ONLY ONE BOX):

(1) ☐ Single-establishment Employer Report

Multi-establishment Employer:

(2) ☐ Consolidated Report (Required)

(3) ☐ Headquarters Unit Report (Required)

(4) ☐ Individual Establishment Report (submit one for each establishment with 50 or more employees)

(5) ☐ Special Report

2. Total number of reports being filed by this Company: (Answer on Consolidated Report only) \_\_\_\_\_

**Section B – COMPANY IDENTIFICATION** (To be answered by all employers)

**OFFICE  
USE  
ONLY**

1. Parent Company:

a. Name of parent company (owns or controls establishment in Item 2 below). (Omit if same as above)

a.

Address (Number and Street)

b.

City or Town

State

ZIP code

c.

2. Establishment for which this report is filed: (Omit if same as above)

a. Name of establishment:

d.

Address (Number and street)

City or Town

County

State

ZIP code

e.

b. Employer Identification No. (IRS 9-DIGIT TAX NUMBER): \_\_\_\_\_

f.

c. Was an EEO-1 report filed for this establishment last year? (6) ☐ Yes (7) ☐ No

**METROPOLITAN TRANSPORTATION AUTHORITY**  
**Office of Civil Rights**

**EQUAL EMPLOYMENT OPPORTUNITY**  
**EMPLOYMENT INFORMATION REPORT EEO-1**

**Section C – EMPLOYMENT DATA**

Employment at this establishment - Report all permanent full-time and part-time employees including apprentices and on-the-job trainees unless specifically excluded as set forth in the instructions. Enter the appropriate figures on all lines and in all columns. Blank spaces will be considered as zeros.

Job Categories	NUMBER OF EMPLOYEES										
	Overall Totals (Sum of Col. B thru K) A	MALE					FEMALE				
		White (Not of Hispanic Origin) B	Black (Not of Hispanic Origin) C	Hispanic D	Asian or Pacific Islander E	American Indian or Alaskan Native F	White (Not of Hispanic Origin) G	Black (Not of Hispanic Origin) H	Hispanic I	Asian or Pacific Islander J	American Indian or Alaskan Native K
Officials and Managers 1											
Professionals 2											
Technicians 3											
Sales Workers 4											
Office & Clerical 5											
Craft Workers (Skilled) 6											
Operatives (Semi-Skilled) 7											
Laborers (Unskilled) 8											
Service Workers 9											
<b>TOTAL</b> 10											
Total employment reported in previous EEO-1 report 11											

**NOTE:** Omit Questions 1 and 2 on the Consolidated Report.

1. Date(s) of payroll period used: \_\_\_\_\_

2. Does this establishment employ apprentices? (8) ☐ Yes (9) ☐ No

**METROPOLITAN TRANSPORTATION AUTHORITY**  
**Office of Civil Rights**

**EQUAL EMPLOYMENT OPPORTUNITY**  
**EMPLOYER INFORMATION REPORT EEO-1**

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**Section D – ESTABLISHMENT INFORMATION (Omit on the Consolidated Report)**

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- |   |                                |
|---|--------------------------------|
| 1. What is the major activity of this establishment? (Be specific, i.e., manufacturing steel castings, retail grocer, wholesale plumbing supplies, title insurance, etc. Include the specific type of product or type of service provided, as well as the principal business or industrial activity.) | <b>OFFICE<br/>USE<br/>ONLY</b> |
|---|--------------------------------|

g.

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**Section E – REMARKS**

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1. Use this item to give any identification data appearing on last report which differs from that given above, explain major changes in composition or reporting units and other pertinent information.

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**Section F – CERTIFICATION**

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- Check (10) ☐ All reports are accurate and were prepared in accordance with the instructions (check on Consolidated only)
- One: (11) ☐ This report is accurate and was prepared in accordance with the instructions.

Name of Certifying Official	Title	Signature	Date
Name of person to contact regarding this report (type or print)	Address (Number and Street)		
Title	City and State	ZIP Code	Telephone Number (Including Area Code)

All reports and information obtained from individual reports will be kept confidential as required by Section 709(e) of Title VII.  
WILLFULLY FALSE STATEMENTS ON THIS REPORT ARE PUNISHABLE BY LAW, U.S. CODE, TITLE 18, SECTION 1001.

## **STAFFING PLAN**

Project/RFP Title: \_\_\_\_\_ Location of Contract : \_\_\_\_\_  
County

ZIP

Contractor/Firm Name: \_\_\_\_\_ Address : \_\_\_\_\_  
City State

ZIP

Check applicable categories: (1) Staff Estimates include: Contr☐ct/Project Staff Total W☐ork Force Subc☐ntractors  
 (2) Type of Contract: Cons☐truction Consu☐lants Comm☐munities Servic☐e/Consultants

Total Anticipated Work Force											Total Percent Minority Employees	Total Percent Female Employees
Federal Occupational Category	Total Number of Employees		Black (Not of Hispanic Origin)		Hispanic		Asian or Pacific Islander		Native American/ Alaskan Native			
	Male	Female	Male	Female	Male	Female	Male	Female	Male	Female		
Officials/Admin.												
Professionals												
Technicians												
Sales Workers												
Office & Clerical												
Craft Workers												
Operatives												
Laborers												
Service Workers												
<b>TOTALS</b>												

Company Official's Name: \_\_\_\_\_ Title : \_\_\_\_\_

Company Official's Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Telephone Number: (    ) \_\_\_\_\_

**APPENDIX C**  
**MTA MASTER UNIFORM INSURANCE REQUIREMENTS**  
**NON-CONSTRUCTION AGREEMENTS - LIRR**

<b>Contract Number:</b>	Req# LIRRD0000219252 & LIRRD0000222633
<b>Prepared By:</b>	RIM3
<b>Description:</b>	Preventive maintenance and repair of HVAC Equipment located at LIRR Arch St. Facility and LIRR Signal, Communications, and Substation Department

The term “Contractor” as used in this document shall refer to any third party entering into a contract (“Contract”) with the Long Island Rail Road (“LIRR”)/Metropolitan Transportation Authority (“MTA”). As such, the term may encompass Contractors, Consultants, and Design Build Contractors. The term “Work” as used in this document shall refer to all work, services or other performance of the Contractor in connection with such Contract.

**SECTION A. INSURANCE SCHEDULE**

The Contractor shall procure, at its sole cost and expense, and shall maintain at all times during the term of this Contract, through Final Completion, including any warranty period if applicable, and for such longer period of time if specified, the following classes of insurance in the form and limits indicated by the checked box (s) set forth below and as outlined in **Section B Insurance Requirements**.

*[Note: The Procurement Representative must check all that apply and insert appropriate amounts.]*

<b>INSURANCE</b>		<b>MINIMUM AMOUNTS</b>	
<input checked="" type="checkbox"/>	Workers’ Compensation	\$	Statutory Limits
<input checked="" type="checkbox"/>	- Employer’s Liability	\$	1,000,000 – NYS; 2,000,000 CT
<input type="checkbox"/>	- Longshore & Harbor Workers’ Endorsement	\$	
<input type="checkbox"/>	- Maritime Coverage Endorsement (Jones Act)	\$	
<input checked="" type="checkbox"/>	Commercial General Liability (per occurrence)	\$	1,000,000
<input checked="" type="checkbox"/>	- General Aggregate	\$	2,000,000
<input checked="" type="checkbox"/>	- Products and Completed Operation	\$	2,000,000
<input checked="" type="checkbox"/>	Business Automobile Liability (each accident)	\$	1,000,000
<input checked="" type="checkbox"/>	Umbrella/Excess Liability	\$	2,000,000
<input checked="" type="checkbox"/>	- Aggregate	\$	2,000,000
<input type="checkbox"/>	Professional Liability	\$	
<input type="checkbox"/>	Cyber and Privacy	\$	
<input type="checkbox"/>	Technology Errors & Omissions	\$	
<input type="checkbox"/>	Contractor’s Pollution Liability	\$	
<input type="checkbox"/>	Valuable Papers	\$	
<input type="checkbox"/>	Property Insurance	\$	
<input type="checkbox"/>	Crime	\$	
<input type="checkbox"/>	Railroad Protective Liability (per occurrence/aggregate)	\$	
<input type="checkbox"/>	Garage Liability/ Garage Keepers Legal Liability	\$	
	Other:	\$	



**APPENDIX C**  
**MTA MASTER UNIFORM INSURANCE REQUIREMENTS**  
**NON-CONSTRUCTION AGREEMENTS - LIRR**

**SECTION B. INSURANCE REQUIREMENTS**

- i. **Workers' Compensation Insurance** as required by statute in the State in which the contract work will be performed. Employer's Liability Insurance with limits of not less than \$1,000,000 bodily injury per accident; \$1,000,000 bodily injury per disease; and \$1,000,000 annual aggregate. For work conducted outside the State of New York, Employer's Liability Insurance requires limits of not less than \$2,000,000 bodily injury per accident; \$2,000,000 bodily injury per disease; and \$2,000,000 annual aggregate and must provide proof that its Workers' Compensation Insurance policy has been endorsed to include "Other States Coverage."
- If Contractor leases one or more employees through the use of a payroll, employee management, or other similar company, then Contractor must procure worker's compensation insurance written on an "if any" policy form, including an endorsement providing coverage for alternate employer/leased employee liability.
  - If the Work will involve, in whole or in part, work or operations on the navigable waters of the United States or on a flagged vessel, then Contractor shall obtain coverage pursuant to the Jones Act and/or the Longshoremen's and Harbor Worker's Compensation Act as applicable.
- ii. **Commercial General Liability ("CGL") Insurance** covering claims for personal and advertising injury, bodily injury and property damage arising out of the Work and in a form providing coverage no less broad than that of the current ISO Commercial General Liability Insurance policy (Occurrence Form, number CG 00 01). Such insurance shall be issued on an occurrence basis to provide coverage for all operations including the products-completed operations hazard subject to the limitation of any applicable statute. The limits of such insurance shall renew annually and not be less than:
- a) \$1,000,000 each Occurrence
  - b) \$2,000,000 aggregate for products-completed operations
  - c) \$2,000,000 general aggregate limit; and

Additionally, the policy shall also comply with the following provisions:

- Primary General Liability limits may **not** be satisfied by Umbrella / Excess insurance.
  - The policy shall not contain any contractual exclusion relative to Labor Laws or any other exclusions or limitations directed toward any types of projects, materials or processes involved in the Work.
  - The policy shall not contain any of the following exclusions: subcontractor's exclusion; construction defect exclusion; leased worker exclusion; cross liability exclusion; crane exclusion; and demolition exclusion or "explosion, collapse and underground" exclusion.
  - The policy shall include independent contractor and contractual liability coverages.
  - **Work on Railroad Premises.** Construction Contracts involving construction work taking place within 50 feet of a railroad must include evidence that General Liability endorsement CG 24 17 is in effect. Endorsement "Schedule" shall designate the Railroad Name and Designated Job Site with reference to this Contract number.
    - Coverage for claims for bodily injury asserted by a railroad employee of an additional insured and any Employer's Liability Exclusion which may otherwise operate to exclude such coverage shall be removed (**applicable to LIRR/MNR contracts**).
- iii. **Business Automobile Liability Insurance** covering any owned, non-owned, and hired vehicles on and off-site for claims arising out of the ownership, maintenance or use of any such vehicle. Such insurance shall provide coverage as broad as the standard ISO Comprehensive Automobile Liability policy (CA 00

**APPENDIX C**  
**MTA MASTER UNIFORM INSURANCE REQUIREMENTS**  
**NON-CONSTRUCTION AGREEMENTS - LIRR**

01, CA 00 05, CA 00 12, CA 0020), with limits not less than the amount set forth in **Section A Insurance Schedule**. If the Work involves transportation of hazardous or regulated substances, hazardous or regulated wastes and/or hazardous or regulated materials, Contractor shall provide pollution auto coverage equivalent to that provided under the ISO pollution liability-broadened coverage for covered autos endorsement (CA 99 48), and the Motor Carrier Act endorsement (MCS 90). Any statutorily required “No-Fault” benefits and uninsured/underinsured motorist coverage shall be included.

- iv. **Umbrella/Excess Liability Insurance** with limits not less than as set forth in **Section A. Insurance Schedule**, written on an occurrence basis in excess of the limits indicated for Commercial General Liability, Employer’s Liability, and Business Automobile Liability Insurance identified above, *and which is at least as broad as each and every one of the underlying policies*. The umbrella/excess liability policies shall be written on a “drop-down” and “follow form” basis, with only such exceptions expressly approved in writing by LIRR/MTA.
- v. **Professional Liability Insurance** covering damage for liability arising out of any negligent act, error, or omission in the rendering of or failure to render professional services required by this contract by the Contractor and by any partner, subcontractor or consultant of the Contractor including but not limited to construction / project management, architectural, engineering, specifications, installation, modification, abatement, replacement or approval of products, materials or processes containing pollutants, and the failure to advise of or detect the existence or the proportions of pollutants and/or surveying services, and/or any party whose work involves the preparation of plans or drawings, with limits not less than the amount set forth in **Section A Insurance Schedule** per claim and annual aggregate. Such policy shall not contain any exclusions directed toward any types of projects, materials, services, or processes involved in the work. The retroactive date for coverage will be no later than the commencement of professional services on the project and be maintained for a period of at least three (3) years after completion of the professional services, subject to the limitation of any applicable statute. In the event of cancellation or non-renewal, the discovery period for insurance claims will be at least three (3) years or otherwise as by agreement with the LIRR/MTA.
- vi. **Cyber and Privacy Insurance** - When Contractor’s work includes access to LIRR/MTA’s proprietary information or the personally identifiable information of the LIRR/MTA employees, customers or other third parties in an electronic format, or impacts systems where such information is stored, processed, analyzed, or transmitted, Contractor shall maintain coverage for costs, expenses, lost revenues, and/or losses associated with a payment card industry or regulatory investigation, fine, or consent decree, if applicable, related to the following:
- Liability resulting from the actual or suspected disclosure, unauthorized access, destruction, loss, alteration, misappropriation, or unlawful acquisition of commercial and/or personally identifiable information that is deemed confidential by LIRR/MTA or is otherwise considered to be confidential or protected from disclosure by law or agreement, and shall extend to include indemnification of LIRR/MTA’s investigation, notification, regulatory response, and remedial action costs, including attorneys’ fees, in the event of an actual or alleged security or data breach, whether or not required by statute; including alleged theft of data in any form;
  - System failure or interruption and related costs, liabilities, and lost revenues, with a waiting period of no more than 8 hours;
  - Information security incidents, including but not limited to, social engineering, phishing, fraudulent transfer, ransomware, denial of service attacks, or transmission of malicious code;
  - Liability resulting from actual or suspected disclosure, unauthorized access, destruction, loss, alteration, misappropriation, or unlawful acquisition of electronic information and electronic assets or liability for economic harm suffered by others from an actual, suspected, or alleged failure of Contractor’s computer or network security, whether the attack originated internally or externally;
  - Defense of any regulatory action, litigation, or other actual or anticipated adversarial proceeding involving an alleged breach of privacy, confidentiality, integrity or availability of information and

## APPENDIX C

### MTA MASTER UNIFORM INSURANCE REQUIREMENTS

#### NON-CONSTRUCTION AGREEMENTS - LIRR

shall extend to include investigation expenses, including legal counsel, a crisis communications firm and computer forensic/cybersecurity experts, and indemnification for fines, penalties, liability, and any other resulting costs;

- Retaining a computer forensic/cybersecurity incident response firm;
- Retaining a crisis communications firm;
- Hardware replacement;
- Software replacement;
- Data asset protection and the costs to recollect, restore, or recreate electronic data, software or other applications that have been altered, corrupted, destroyed, deleted, or damaged by a computer attack;
- The cost of notifying individuals, government agencies, credit reporting agencies, and other entities of a security or data breach;
- The cost of credit monitoring services, call center services, and any other causally related crisis management services and expenses for up to two (2) years to support those affected;
- Cyber extortion threats or extortion relating to an actual or alleged breach of computer security and or actual or alleged release of confidential information;
- Coverage shall contain no provision that would prevent, preclude or exclude a claim triggered by or connected with an actual or suspected act of cyber terrorism, cyberwar, or hostilities between/among nations. Coverage shall contain no provision that would prevent coverage based upon the reasonableness of information security efforts;
- Coverage shall contain no provision that would prevent, preclude or exclude any claim or loss triggered by or connected with an alleged breach of any privacy policy or of any contractual obligation with LIRR/MTA;
- Coverage shall contain no provision that would prevent, preclude or exclude any claim or loss involving employee-owned computer or mobile devices used in furtherance of the Contractor's or LIRR/MTA's business;
- Coverage shall contain no provision that would prevent, preclude or exclude loss for physical or bodily injury if such physical or bodily injury arises out of mental anguish, mental injury, shock, humiliation, or emotional distress;
- Coverage under the policy shall extend to actual or alleged acts, errors or omissions committed by Contractor or its agents, subcontractors, independent contractors or employees;
- Coverage shall contain language specifying that any consent required from the insurer shall not be unreasonably withheld;
- Coverage shall contain severability for the insured organization for any intentional act exclusions and shall include consequential or vicarious liabilities and direct losses for the wrongful acts or failures of Contractor and of LIRR/MTA. Additionally, such policy shall cover consequential or vicarious liabilities and direct losses; and
- This coverage shall have the "Insured v. Insured" exclusion amended to allow an "Additional Insured" to bring a claim against the Named Insured.

The policy shall be on a per occurrence basis with limits not less than the amount set forth in **Section A. Insurance Schedule**. If the policy is subject to an aggregate limit, replacement insurance will be required if the aggregate is exhausted. Contractor shall be responsible for all claim expenses and loss payments. If any insurance coverage part is provided on a claims-made basis, Contractor must maintain continuous coverage during the term of the Contract and include the following:

- Policy retroactive date coincides with or precedes Contractor's start of services under the Contract and shall continue until the termination of the Contract (including subsequent policies purchased as renewals or replacements);
- Policy allows for reporting of circumstances or incidents that might give rise to future claims;
- No bar to coverage due to untimely notice unless the insurer has suffered actual prejudice due to such untimely notice; and

## **APPENDIX C**

### **MTA MASTER UNIFORM INSURANCE REQUIREMENTS NON-CONSTRUCTION AGREEMENTS - LIRR**

- If insurance is terminated for any reason, Contractor agrees to purchase an extended reporting provision of at least two (2) years to report claims arising from services performed in connection with the Contract.

- vii. **Technology Errors and Omissions Insurance** coverage for liability from errors, omissions or negligent acts in rendering or failing to render computer or information technology services and technology products including bodily injury.

Coverage for violation of software copyright shall be included and shall cover the failure of products to perform the intended function or serve the intended purpose. Services insured shall include, as applicable:

- Systems analysis
- Systems programming
- Data processing
- Systems integration
- Outsourcing including outsourcing of development and design work
- Systems design, consulting, development and modification
- Training services relating to computer software or hardware
- Management, repair and maintenance of computer products, networks and systems
- Marketing, selling, servicing, distributing, installing and maintaining computer hardware or software
- Data entry, modification, verification, maintenance, storage, retrieval or preparation of data output.

The policy shall not contain a provision that would prevent, preclude or exclude liability triggered by or connected to a network failure, system failure or the disclosure of private information. Coverage under the policy shall extend to actual or alleged acts, errors or omissions committed by Contractor or its agents, subcontractors, independent contractors or employees.

The policy shall be on a per occurrence basis with limits not less than the amount set forth in **Section A. Insurance Schedule**. If the policy is subject to an aggregate limit, replacement insurance will be required if the aggregate is exhausted. Contractor shall be responsible for all claim expenses and loss payments. If insurance is provided on a claims-made basis, Contractor must maintain continuous coverage during the term of the Agreement and include the following:

- Policy retroactive date coincides with or precedes Contractor's start of provision of services under the Agreement and shall continue until the termination of the Agreement (including subsequent policies purchased as renewals or replacements);
- Policy allows for reporting of circumstances or incidents that might give rise to future claims; and
- If insurance is terminated for any reason, Contractor agrees to purchase an extended reporting provision of at least two (2) years to report claims arising from services performed in connection with the Agreement.

- viii. **Valuable Papers and Records Insurance** covering the cost to repair or replace with like kind and quality including the cost of gathering and/or assembling information, subject to a minimum limit of liability of not less than the amount set forth in **Section A Insurance Schedule**. The LIRR/MTA shall be named as loss payees as their interests may appear and all rights of subrogation against LIRR/MTA, their agents or assigns shall be waived.

- ix. **Contractor's Pollution Liability Insurance** with limits not less than the amount set forth in **Section A Insurance Schedule** per occurrence and general aggregate on a per project basis including completed operations coverage to be maintained for at least three (3) years after final completion of the work. Policy shall cover environmental damage resulting from pollution conditions that arise from the operations of the contractor or subcontractor, as applicable, and described under the scope of services of this

**APPENDIX C**  
**MTA MASTER UNIFORM INSURANCE REQUIREMENTS**  
**NON-CONSTRUCTION AGREEMENTS - LIRR**

contract. Coverage must apply to sudden and non-sudden pollution conditions including the discharge, dispersal, release or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquids or gases, waste materials or other irritants, contaminants or pollutants, silt or sediment into or upon land, the atmosphere or any watercourse or body of water, provided such conditions are not naturally present in the environment in the concentration or amounts discovered, unless such natural condition(s) are released or dispersed as a result of the performance of Covered Operations. Such insurance shall include but not be limited to:

- Bodily injury, sickness, disease, mental anguish or shock sustained by any person, including death; medical monitoring
  - Physical injury to or destruction of tangible property of parties other than the Insured including the resulting loss of use and diminution in value thereof; Loss of use, but not diminution in value, of tangible property of parties other than the Insured that has not been physically injured or destroyed
  - Natural Resource Damages;
  - Cleanup Costs
  - Transportation and Non-Owned Disposal Site coverage (with no sunset clause/restricted coverage term) if Contractor or subcontractor is disposing of contaminated material (s)
  - No exclusions for asbestos, lead paint, silica or mold/fungus/legionella
  - Defense including costs, charges and expenses incurred in the investigation, adjustment or defense of claims for such compensatory damages
- x. **Railroad Protective Liability Insurance** (ISO-RIMA or equivalent form) if any Work will be taking place within 50 feet of a railroad, subway or similar tracked conveyance or requires flag or protective measures by LIRR or its affiliates or their respective employees, covering the work to be performed at the designated job site and affording protection for damages arising out of bodily injury or death, physical damage to or destruction of property, including damage to the Insured's own property and conforming to the following:
- The policy shall be issued to the "Named Insureds" listed under Section D.
  - The limit of liability shall be not less than \$2,000,000 per occurrence, subject to a \$6,000,000 annual aggregate;
  - Policy must be endorsed to provide coverage for claims arising from injury to employees covered by Federal Employer's Liability Act (FELA), when applicable.
  - Indicate the Name and address of the designated Contractor, location of the Work the Contract description and Contract Number, if applicable.

**APPENDIX C**  
**MTA MASTER UNIFORM INSURANCE REQUIREMENTS**  
**NON-CONSTRUCTION AGREEMENTS - LIRR**

**SECTION C. GENERAL INSURANCE REQUIREMENTS.**

The following requirements are applicable to all insurance coverages required under this Contract, except to the extent otherwise indicated.

- i **Insurer Requirements.** All policies of insurance shall be placed with insurers acceptable to LIRR/MTA. The insurance underwriter(s) must be duly licensed or approved Surplus Lines insurer to do business in the state where the Work is to be performed and must have a financial ratings of A-/VII or better in the most recent edition of Best's Key Rating Guide or otherwise satisfactory to LIRR/MTA.
- ii **Insurance Policies.** The Contractor shall furnish certified copies of all insurance policies required to be maintained under this Agreement within ten (10) business days after receiving LIRR/MTA' request.
- iii **Breadth of Coverage.** All policies shall provide coverage to the additional insureds that is at least as broad as that provided to the first named insured to each policy. In the event that any policy provided in compliance with this contract states that the coverage provided to an additional insured shall be no broader than that required by contract, or words of similar meaning, the parties agree that nothing in this contract is intended to restrict or limit the breadth of such coverage. The limits of insurance stated for each type of insurance are minimum limits only. If the Contractor's policy provides greater limits, then the Additional Insureds shall be entitled to, or to share in, the full limits of such policy, and this Contract shall be deemed to require such full limits.
- iv **Right to Request Additional Insurance.** Contractor shall increase required insurance amounts upon direction by LIRR/MTA.
- v **Additional Insureds.** All insurance required (*except for Workers' Compensation, Professional Liability insurance or otherwise noted*), shall name the parties listed in Section D as Additional Insureds, *and shall include* their respective subsidiary and affiliated companies, and their Boards of Directors, officers, employees, representatives, and agents (hereinafter, collectively the "Additional Insureds"). For the Commercial General Liability insurance, additional insured status must be provided on ISO forms or their equivalent at least as broad as **ISO forms CG 2010 with CG 2037 where applicable.** No other General Liability Additional Insured endorsement will be accepted unless approved by LIRR/MTA.
- iv. **Primary and Non-Contributory.** Each policy required in this Section, including primary, excess, and/or umbrella, shall provide that the insurance provided to the Additional Insureds is primary and non-contributory, such that no other insurance or self-insured retention carried or held by LIRR/MTA shall be called upon to contribute to a loss covered by insurance for the named insured.
- v. **Waiver of Subrogation.** To the fullest extent permitted by law, Contractor will require all insurance policies required by this Section to include clauses stating each insurer will waive all rights of recovery. All waivers provided herein shall be effective as to any individual or entity even if such individual or entity (a) would otherwise have a duty of indemnification, contractual or otherwise, or (b) did not pay the insurance premium directly or indirectly, and whether or not such individual or entity has an insurable interest in any property damaged.
- vi. **Self-Insured Retentions.** None of the insurance required shall be subject to any self-insured retention ("SIR") or deductible greater than \$500,000 without approval by LIRR/MTA. Requests for higher deductibles or SIR must be submitted in writing for consideration. If LIRR/MTA agrees to accept such higher deductible or SIR, that approval will be given in writing. If approved, such SIR or deductible maintained by the contractor shall cover any liability imposed upon the Contractor and any and all of its subsidiaries with respect to all operations, work, and obligations assumed by the Contractor. The Contractor represents that such program provides the Indemnified Parties with all rights, immunities, and protections that would be provided by traditional independent insurance, including, but not limited

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to, the defense obligations that insurers are required to undertake in liability policies pursuant to the terms of the Contract.

- vii. **Subcontract Agreements.** Contractor shall by appropriate written agreements flow down the requirements for i) the waiver of subrogation for all required insurance, and ii) additional insured coverage for all required insurance and iii) other requirements of this Section to all tiers of subcontractors, for all insurance required of such subcontractors by Contractor for the Work.
- viii. **No Limitation.** Nothing in this Section shall be construed as limiting in any way the extent to which Contractor may be held responsible for payment of damages resulting from their operations. Contractor's obligations to procure insurance are separate and independent of and shall not limit Contractor's contractual indemnity and defense obligations. LIRR/MTA does not represent that coverages and limits required in this Contract will necessarily be adequate to protect Contractor.
- ix. **Notice of Cancellation or Non-Renewal.** The Contractor agrees to notify LIRR/MTA thirty days prior to any cancellation, non-renewal or change to any insurance policies required. Notice shall be sent electronically to the *contract-specific email address* provided to Contractor via MTA Certificate of Insurance Management System (CIMS), Complianz™.
- x. **Notice of Occurrence.** The Contractor shall file the following with the Long Island Rail Road Claims Department, Attention: Director of Claims (with a copy to the Engineer), 93-02 Sutphin Boulevard, 4<sup>th</sup> Floor, Jamaica, NY 11435: (1) a notice of any occurrence likely to result in a claim against the LIRR, which shall be filed immediately; and (2) a detailed, sworn proof of interest and loss, which shall be filed within sixty (60) days from the date of loss.
- xi. **Insurance Not In Effect.** If, at any time during the period of this Contract, insurance as required is not in effect, or proof thereof is not provided to LIRR/MTA, then LIRR/MTA shall have the option to: (i) direct the Contractor to suspend work with no additional cost or extension of time on account thereof; or (ii) treat such failure as an Event of Default.
- xii. **Conformance to Law.** If applicable law limits the enforceability of any of the foregoing requirements, then Contractor shall be required to comply with the foregoing requirements to the fullest extent of coverage and limits allowed by applicable law and the provisions of insurance shall be limited only to the extent required to conform to applicable law.
- xiii. **Certificates of Insurance.**
1. Contractor shall furnish LIRR/MTA with Certificates of Insurance ("COI") utilizing ACORD 25 and ACORD 101, if applicable, completed by a duly authorized representative evidencing coverage required. Such Certificates of Insurance shall be delivered to LIRR/MTA before any Work hereunder is commenced by Contractor and annually thereafter on or before the policy effective dates of the Contractor's policies based on the instructions stated herein.
- Evidence of Railroad Protective Liability and/or Builder's Risk Insurance requires submission of a policy and is not acceptable on a certificate of insurance. A binder is acceptable pending issuance of the policy. The binder must indicate the contract number, description and location of Work and the designated Contractor and must be signed by the authorized producer or insurance carrier.
2. Insurance Confirmation. In addition to the foregoing certificates of insurance, the Contractor or its insurance broker shall submit a copy of the following endorsements with reference to: the contract number, description and location of Work and designated Contractor, where applicable.
    - a. Additional Insured endorsements specifically naming the LIRR/MTA per requirements of this Contract shall be provided as indicated in Section C (v) – General Insurance Requirements.
    - b. Primary and non-contributory endorsement(s) CG 2001 or equivalent naming the LIRR/MTA.

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- c. Waiver of Subrogation endorsements (most recent NCCI/ISO or equivalent as applicable) in favor of the LIRR/MTA
- d. Other coverage endorsements may be requested depending on the scope of Work to be performed by the Contractor.

The Contractor shall submit evidence of compliance of all insurance requirements before any Work is started to the LIRR/MTA as follows:

**1. Initial Evidence of Insurance**

Agency Name: MTAHQ

Attention: Peter Lau (Procurement Representative)

Email Address: Peter.Lau@mtahq.org

- 2. **Renewal Insurance:** After the Contractor's insurance has been approved, a "compliant message" verifying insurance compliance will be sent to the Contractor via the MTA Certificate of Insurance Management System (CIMS), Complianz™. It will also provide the email address for all insurance renewals, specific to this Contract. Do not bundle certificates as each contract is assigned a specific email address.

At least two (2) weeks prior to the expiration of the policies, Contractor shall endeavor to provide evidence of renewal or replacement policies of insurance, with terms and limits no less favorable than the expiring policies.

- 3. Failure of the LIRR/MTA to demand such COIs or other evidence of full compliance with these insurance requirements, or failure of the LIRR/MTA to identify a deficiency from evidence provided, will not be construed as a waiver of the Contractor's obligation to maintain such insurance. LIRR/MTA acceptance of any COI evidencing the required coverages and limits does not constitute approval or agreement by the LIRR/MTA that the insurance requirements have been met or that the insurance policies shown in the COI are in compliance with the requirements.
- 4. The LIRR/MTA has the right, but not the obligation, of prohibiting Contractor from entering the Project Site until LIRR/MTA receives all COIs or other evidence that insurance has been placed in complete compliance with these requirements.



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**SECTION D. REQUIRED ADDITIONAL INSURED / INDEMNITEES (by Location of Work)**

- ☒ **All LIRR Agreements:** Long Island Rail Road (LIRR), MTA Grand Central Madison Operating Company, Metropolitan Transportation Authority (MTA) and its subsidiaries and affiliates and New York & Atlantic Railway Company (when applicable) Anacostia Rail Holdings and the respective affiliates and subsidiaries existing currently or in the future of and successors to each Indemnified Parties listed herein.
- ☐ **Penn Station:** Long Island Rail Road (LIRR), MTA Grand Central Madison Operating Company, Metropolitan Transportation Authority (MTA) and its subsidiaries and affiliates and New York & Atlantic Railway Company (when applicable) Anacostia Rail Holdings and the respective affiliates and subsidiaries existing currently or in the future of and successors to each Indemnified Parties listed herein, National Railroad Passenger Corp. (Amtrak), NJ Transit Corporation, and NJ Transit Rail Operations, Inc.
- ☐ **West Side Yard:** Long Island Rail Road (LIRR), MTA Grand Central Madison Operating Company, Metropolitan Transportation Authority (MTA) and its subsidiaries and affiliates and New York & Atlantic Railway Company (when applicable) Anacostia Rail Holdings and the respective affiliates and subsidiaries existing currently or in the future of and successors to each Indemnified Parties listed herein, National Railroad Passenger Corp. (Amtrak), NJ Transit Corporation, NJ Transit Rail Operations, Inc., Consolidated Rail Corporation and CSX Transportation Inc. and Triborough Bridge & Tunnel Authority (B&T).
- ☐ **Sunnyside Yard:** Long Island Rail Road (LIRR), MTA Grand Central Madison Operating Company, Metropolitan Transportation Authority (MTA) and its subsidiaries and affiliates and New York & Atlantic Railway Company (when applicable) Anacostia Rail Holdings and the respective affiliates and subsidiaries existing currently or in the future of and successors to each Indemnified Parties listed herein, National Railroad Passenger Corp. (Amtrak), NJ Transit Corporation, NJ Transit Rail Operations, Inc. and New York & Atlantic Railway Company (when applicable).
- ☐ **Jamaica:** Long Island Rail Road (LIRR), MTA Grand Central Madison Operating Company, Metropolitan Transportation Authority (MTA) and its subsidiaries and affiliates and New York & Atlantic Railway Company (when applicable) Anacostia Rail Holdings and the respective affiliates and subsidiaries existing currently or in the future of and successors to each Indemnified Parties listed herein, and Port Authority of NY & NJ.
- ☐ **GCMC**  
New York & Atlantic Railway Company, Anacostia Rail Holdings Company, and their subsidiaries and affiliates currently existing or existing in the future, Midtown Trackage Ventures LLC, Spinoso Management Group LLC, the City of New York, the State of Connecticut, the Connecticut Department of Transportation and the successors, assigns, officers, employees, directors, members, representatives and agents of all of the foregoing
- ☐ **Other:**

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**~~GENERAL GUIDELINES FOR SUBMISSION OF INSURANCE~~**  
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**1. INSURANCE REQUIREMENTS:**

Refer to your agreement for required insurance coverages, limits, and endorsements and review with your authorized insurance broker for compliance

**2. ACCEPTABLE FORMS OF INSURANCE:**

- ACORD 25: Certificate of Insurance
- ACORD 855: NY Construction Certificate of Liability Addendum
- ACORD 28: Certificate of Commercial Property Insurance
- ACORD Binder or Insurance Policy
- Workers' Compensation (*Other Options*):
  - C-105.2 – Certificate of Workers' Compensation Insurance; or
  - U-26.3 – Certificate of Workers' Compensation from the State Insurance Fund; or
  - GSI-105/SI-12 – Certificate of Workers' Compensation Self Insurance; or
  - CE-200 – Attestation of Exemption when Contractor meets the requirements (e.g.) Sole Proprietor

**3. CERTIFICATE OF INSURANCE MUST INCLUDE AT A MINIMUM:**

- Policy coverage details (e.g.) policy term, per occurrence/per project; limits/sub-limits, aggregate limits, deductibles, self-insured retentions, and insurance carrier name and corresponding NAIC #
- Contract Identifier (e.g.) Contract #, RFP #, or Entry Permit #
- Location and Description of Work
- Authority Indemnified parties as an additional insured including primary and noncontributory coverage and waiver of subrogation in favor of the MTA Agency
- Certificate Holder must list the MTA Agency's name and address
- Certificate of Insurance must be signed by an authorized insurance representative

**4. INSURANCE BINDER / POLICY MUST INCLUDE AT A MINIMUM:**

*(Applicable for Railroad Protective Liability and Builder's Risk/Installation Floater)*

- Policy coverages and details (e.g.) policy term, limits/sub-limits, aggregate limits, deductibles, self-insured retentions, insurance carrier name and applicable NAIC #
- Contract Number or Entry Permit Number; Designated Contractor; Location and Description of Work
- List all required parties as a named insured or additional named insured
- Binder must be issued and signed by the authorized insurance company or their authorized insurance agent

**5. SUBMISSION OF INSURANCE:**

*(Evidence of all required insurance must be sent to your Agency or Procurement Representative)*

- ACORD Certificate of Insurance
- Additional Insured Endorsements (e.g.) CG 20 10 and CG 20 37 or CG 20 38 and CG 20 37
- Primary and Non-Contributory Endorsements
- Waiver of Subrogation Endorsements
- Environmental Endorsements (e.g.) MCS 90 and CA 99 48, and or NODS, when applicable
- Insurance Policy - A Binder may be accepted pending issuance of the policy. Policy must be submitted within 30 days from binder effective date.
- Joint Venture – If the Contractor/Consultant is a Joint Venture, General Liability Insurance must be provided in the name of the Joint Venture. Alternatively, a Named Insured Endorsement listing the Joint Venture may be accepted.

**6. INSURANCE COMPLIANCE:**

The Contractor will be notified when insurance is compliant through the assigned “**contract specific**” email address.

## **APPENDIX D**

### **Minority and Women-Owned Business Enterprise Program Submission Requirements (Invitation for Bids)**

#### **A. NEW YORK STATE LAW AND REGULATIONS**

Bidders are advised that this contract is subject to the provisions of Article 15-A of the New York Executive Law (the “State MBE/WBE Law”) and implementing regulations set forth in Chapter XIV, Parts 140 to 145 of Title 5 NYCRR (the “Regulations”) establishing a policy and program of the State to promote equality of economic opportunity for business enterprises owned by minority group members and women. It is the policy of the Metropolitan Transportation Authority (“MTA”) and its subsidiary and affiliated agencies that Minority and Women-Owned Business Enterprises (“MBE/WBEs”), which are certified as such by Empire State Development, Division of Minority and Women’s Business Development (“DMWBD”), are provided the maximum, feasible opportunity to participate in the performance of this contract. Each bidder shall take all necessary and reasonable steps to ensure that MBE/WBEs participate and perform work on this contract. A copy of the applicable State MBE/WBE Law and Regulations is available upon written request to the MTA Agency Manager. The MTA Agency Manager works for the MTA Agency sponsoring or awarding this contract.

For this contract, the MTA Agency Manager’s name, telephone number and address are:

Name: Vikas Gera

Telephone No.: 646-252-1352

Address: wgera@mtahq.org

#### **B. CONTRACT PROVISIONS**

The successful bidder and the MTA Agency agree as a condition for the award of this contract, to be bound by the provisions of the State MBE/WBE Law and the accompanying Regulations. This Appendix summarizes the relevant provisions of the State MBE/WBE Law and the Regulations. Unless otherwise stated, all terms used in this Appendix shall have the meaning ascribed to them in the State MBE/WBE Law and the Regulations. In the event there is a difference between what is set forth in this Appendix and what is set forth in the State MBE/WBE Law and the Regulations, which are incorporated herein by reference, the State MBE/WBE Law and the Regulations shall govern.

### **C. GOALS**

The respective goals specified for the utilization of minority and women-owned business enterprises expressed as a percentage of the amount of the total contract price including change orders issued pursuant to the changes provision of this Contract are:

15% for MBE

and

15% for WBE

These goal percentages are subject to the requirements of the State MBE/WBE Law, the Regulations and the provisions of this contract. In the event the apparent low bidder's proposed level of MBE/WBE participation is less than this prescribed level of MBE/WBE participation, to remain eligible for contract award, the apparent low bidder must satisfy the good faith efforts requirements set forth in paragraph L below.

The MTA Department of Diversity and Civil Rights, acting on behalf of the MTA Agency, is responsible for determining compliance by the bidder with MBE/WBE requirements established in this contract. The low bidder shall make all MBE/WBE-related submissions required by this contract to the MTA Agency Manager with a copy to the MTA Department of Diversity and Civil Rights, to the attention of:

Name: Vikas Gera

Metropolitan Transportation Authority  
Department of Diversity and Civil Rights  
2 Broadway, 16th Floor  
New York, NY 10004

### **D. STATE DIRECTORY**

1. In accordance with the State MBE/WBE Law, DMWBD is empowered and requires its director (the "Director"), among other things, to promulgate a directory (the "State Directory") of minority and women-owned business enterprises certified pursuant to the Regulations ("certified businesses"). The State Directory may be accessed on line at: [www.empire.state.ny.us](http://www.empire.state.ny.us).
2. Under the State MBE/WBE Law and Regulations, bidders can only use MBEs and WBEs listed in the State Directory to satisfy the goals in the contract. For the purpose of the federal government's Disadvantaged Business Enterprise ("DBE") Program, the MTA Department of Diversity and Civil Rights has certified certain minority and women-owned business enterprises as DBEs. A firm certified by MTA Department of Diversity and Civil Rights as a DBE for the federal DBE program, which is not listed

in the State Directory may not be used to satisfy MBE/WBE goals established for this contract. YOU MUST USE THOSE FIRMS IN THE STATE DIRECTORY.

#### **E. PROMPT PAYMENT TO SUBCONTRACTORS AND RETAINAGE**

For public work contracts, the prime contractor is required by law to pay all subcontractors, including each MBE/WBE subcontractor under this prime contract for the work performed under its subcontract no later than seven (7) calendar days from the receipt of any payment the prime contractor receives from the MTA Agency for work performed by the subcontractor, and to pay interest at the rate required by law if payment is not made within the aforesaid seven (7) calendar days.

For all contracts other than public work contracts, the prime contractor agrees to pay all subcontractors under this prime contract for the satisfactory performance of their subcontracts no later than thirty (30) days from the receipt of each payment the prime contractor receives from the MTA Agency for work performed by the subcontractor.

If this prime contract includes retainage, the prime contractor may not retain more than the lesser of five percent (5%) or the retainage percentage provided in the contract between the MTA Agency and prime contractor, except that the prime contractor may retain not more than ten percent (10%) of each payment to the subcontractor where, prior to entering into a subcontract with the prime contractor, the prime contractor requested that the subcontractor provide a performance bond and a payment bond for subcontractors, labor and/or material suppliers, each in the full amount of the subcontract and the subcontractor was unable or unwilling to provide such bonds.

The prime contractor must return retainage to any subcontractors within thirty (30) days of receiving a payment from the MTA Agency which returns the prime contractor's retainage for work satisfactorily performed by the subcontractor.

#### **F. MBE/WBE UTILIZATION PLAN**

Unless otherwise provided in the Information for Bidders, the apparent low bidder shall, by close of business on the 7th calendar day after the public bid opening date, submit to the Agency Manager a completed MBE/WBE Utilization Plan Form (Form 15A.1) and Intent to Perform as a MBE/WBE Subcontractor/Subconsultant Form (Form 15A.4) for each MBE/WBE firm identified on the Form 15A.1. The MBE/WBE Utilization Plan shall include the name, address, telephone number and Federal identification number of the bidder. The Schedule of MBE/WBE Participation must demonstrate that the level of MBE/WBE participation will satisfy the MBE/WBE goals in Paragraph C above. If the level of MBE/WBE participation is less than the MBE/WBE goal, the bidder must submit evidence of its good faith efforts to satisfy the MBE/WBE goal as provided in Paragraph J herein. Upon request of the MTA Agency, any other bidder shall, within seven (7) calendar days of such request, submit its completed Form 15A .1 and Form 15A.4, and, if appropriate, a "Request For Total or Partial Waiver of MBE/WBE Goal(s) Pursuant to MBE/WBE Utilization Plan Form", (Form 15A.2), with the required evidence of good faith

efforts.

Bidders have been furnished with these forms in the solicitation document. Additional forms may be obtained from the MTA Department of Diversity and Civil Rights, 2 Broadway, 16th Floor, New York, New York 10004 or by calling (646) 252-1375. The MTA Agency, in its sole discretion, may extend the submission period for a reasonable time.

By listing a firm on its MBE/WBE Utilization Plan Form (Form 15A.1) and the accompanying Intent to Perform as a MBE/WBE Subcontractor/Subconsultant Form (Form 15A.4), the bidder is representing the following:

1. It intends to use the firm for the work specified in the MBE/WBE Utilization Plan Form (Form 15A.1) and the accompanying Intent to Perform as a MBE/WBE Subcontractor/Subconsultant (Form 15A.4), including any change order work required to perform the specified work;
2. On the basis of information known to it and after reasonable inquiry, it believes such firm is a certified MBE/WBE and is technically and financially qualified to perform the work specified and that the firm is available to perform the work;
3. If it is awarded the contract, it will enter into a subcontract with such MBE/WBE (or an approved substitute), subject to the terms and conditions of this contract and provided that the MBE/WBE is certified by DMWBD for the work described and at the price set forth in the MBE/WBE Utilization Plan Form (Form 15A.1) and accompanying Intent to Perform as a MBE/WBE Subcontractor/Subconsultant Form (Form 15A.4);
4. It will not substitute a MBE/WBE firm listed in its MBE/WBE Utilization Plan Form (Form 15A.1) and accompanying Intent to Perform as a MBE/WBE Subcontractor/Subconsultant Form (Form 15A.4), unless the MTA Agency gives prior written approval in accordance with paragraph O below; and

If bidder is a MBE/WBE and lists itself on the MBE/WBE Utilization Plan Form (Form 15A.1) and accompanying Intent to Perform as a MBE/WBE Subcontractor/Subconsultant Form (Form 15A.4), that it will perform the work specified therein with its own workforce.

5. If the bidder is part of joint venture, or has a teaming agreement, or other similar arrangement with a certified MBE/WBE, its value added on participation is equal to the percentage of the goal set forth in the bid document.
6. If bidder is part of a joint venture, or has a teaming agreement, or other similar arrangement that includes a MBE/WBE, and proposes to include such MBE/WBE participation in its Utilization Plan for meeting the goals, it must submit the following to the MTA Agency for review and approval:

- a. The name, address, telephone number and Federal identification of each partner to the agreement;
- b. The Federal identification number of the joint venture or entity established to respond to the solicitation, if applicable;
- c. A copy of the agreement establishing the joint venture, team, or other similar arrangement. If that agreement does not specify and describe the percentage of interest owned by each party to the agreement and the value contributed/added by each party, you must provide copies of other document(s) which provide the missing information.; and
- d. A copy of the mentor-protégé agreement between the parties, if applicable, and if not described in the joint venture, the teaming agreement or other similar arrangement.

#### **G. CONTRACTOR'S OBLIGATION TO MEET MBE/WBE GOALS**

A contractor is contractually obligated to make good faith efforts to meet MBE/WBE goals in its approved MBE/WBE Utilization Plan using the certified MBE/WBE firms to the extent indicated. If the contractor is unable for any reason to meet the goal or utilize a previously identified MBE/WBE firm in an approved plan, the contractor must promptly give written notice to the MTA Department of Diversity and Civil Rights with details of deficiency and the plan to remedy the deficiency. Any request by a contractor for a waiver of goals contained in its approved MBE/WBE Utilization Plan must be made in accordance with paragraph J of this Appendix. A contractor remains obligated to make good faith efforts to meet the goals in its approved MBE/WBE Utilization Plan using the certified MBE/WBE firms identified in its Plan, absent the contractor having been granted a waiver.

#### **H. CREDIT TOWARD MBE/WBE GOALS**

No credit toward meeting either or both the MBE or WBE goal will be allowed unless the DMWBD has certified a firm as a MBE or WBE. Only the value of the work actually performed by the MBE or WBE will be counted toward the respective goal.

1. The MTA Department of Diversity and Civil Rights will credit expenditures to a MBE/WBE contractor toward MBE/WBE goals, only if the MBE/WBE provides an actual service other than acting as an intermediary between a supplier and customer.
2. A prime contractor which is certified as a MBE may use the work it performs to meet the MBE goal and a prime contractor which is certified as a WBE may use the work it performs to meet the WBE goal.
3. A firm which is certified both as a MBE and a WBE may be counted towards either a MBE goal or a WBE goal but such participation may not be counted towards both goals or divided between the MBE goal or the WBE goal.
4. Contractors using MBE or WBE firms merely to pass through funds and invoices will

not be given credit toward the goal. Contractors are prohibited from claiming credit toward the goal from any such uses of MBE or WBE firms.

5. The MTA Department of Diversity and Civil Rights will only allow 25% credit of the total cost for supplies toward achievement of the MBE/WBE goal if a firm is certified as a broker. If a firm is certified as a supplier, the MTA Department of Diversity and Civil Rights will credit 100% of the total cost toward achievement of the MBE/WBE goal.

## **I. DEFICIENCIES IN BIDDER MBE/WBE UTILIZATION PLAN**

Within twenty (20) days of receipt of a bidder's MBE/WBE Utilization Plan, the MTA Agency Manager will send a written notice to the bidder of acceptance or deficiency of the Plan. If the notice specifies a deficiency, within seven (7) business days after receipt, the bidder must deliver to the MTA Agency Manager a written response to the notice of deficiency. Failure to timely respond may be grounds for disqualification.

The MTA Agency may agree in writing to allow (i) additional time to submit, or (ii) additional submissions after the seven (7) business day period, based upon its determination that the bidder is making a good faith attempt to submit a response or to correct the deficiencies.

## **J. WAIVERS**

### **1. When to Request a Total or Partial Waiver:**

- a. If the contract has not yet been awarded, a bidder may request a waiver simultaneously with the bidder's submission of its MBE/WBE Utilization Plan, if that plan fails to demonstrate that the firm will meet the goals;
- b. If a bidder's remedy to notice of deficiency of the MBE/WBE Utilization Plan is not timely provided or is found by the MTA Agency to be inadequate, the bidder shall request a waiver within five (5) business days of request by the MTA Agency.
- c. If the contract has been awarded to the firm and its MBE/WBE Utilization Plan has been approved, the contractor shall request a waiver at the earlier of the following: a) promptly after the contractor realizes that it will not meet the goals; or b) prior to the submission of a request for final payment on the contract.

2. **Waiver Form:** A request for a waiver must be made by submitting a completed "Request for Total or Partial Waiver of MBE/WBE Goals Pursuant to MBE/WBE Utilization Plan Form" (Form 15A.2) and the information specified therein. Additional forms are available upon request from the MTA Agency Manager.

3. **Evaluation of Requests:** The MTA Department of Diversity and Civil Rights will evaluate and determine whether to grant a request for a total or partial waiver of goal



requirements in accordance with the Regulations and on the basis of the information provided on Form 15A.2 and such other information as the MTA Department of Diversity and Civil Rights deems relevant. The goals set by the MTA Department of Diversity and Civil Rights are based on the criteria set forth in the Regulations. The MTA Department of Diversity and Civil Rights will consider whether the bidder/contractor made good faith efforts to identify and afford subcontracting opportunities to MBEs and WBEs, which were technically and financially qualified to perform the work specified, available to perform the work, and submitted competitive bids.

4. A contractor requesting a waiver shall submit its written request to the MTA Agency Manager, with a copy to the MTA Department of Diversity and Civil Rights. Requests for a waiver shall include a copy of all documentation supporting the request as specified in the Regulations and in Form 15A.2. The contractor and/or subcontractor shall supply any additional information and/or documentation applicable to the request for a waiver that the MTA Agency Manager or the MTA Department of Diversity and Civil Rights requests. Contractors and/or subcontractors that intend to file a post-award request for a waiver will be subject to all pre-award MBE and WBE requirements set forth in the contract documents.

#### **K. GOOD FAITH EFFORTS**

The MTA Department of Diversity and Civil Rights shall not grant any automatic waivers of goal requirements but may consider any criteria it determines relevant or which a bidder/contractor submits to document its good faith efforts, provided that the criteria set forth in the Regulations (*see* Section 142.8) will, at a minimum, be considered for purposes of determining whether a bidder/contractor has documented good faith efforts.

#### **L. DISQUALIFICATION OF BIDDER**

The MTA Agency may disqualify a bidder as non-responsible: (i) for failure to submit a MBE/WBE Utilization Plan; (ii) for failure to respond to deficiencies in the MBE/WBE Utilization Plan notice in accordance with paragraph I above; or (iii) upon a determination that the bidder's MBE/WBE Utilization Plan does not show that the goal requirements will be met and the bidder has not documented that it has made good faith efforts to develop a MBE/WBE Utilization Plan that satisfies the goal requirements. The MTA Agency shall issue to a disqualified bidder a notice of disqualification and statement of reasons for its final decision. The disqualified bidder may request a hearing in accordance with the procedures outlined in Executive Law Article 15-A and the Regulations. See paragraph M, below.

#### **M. COMPLAINTS BY A CONTRACTOR**

A bidder/contractor who has received a written notice of disqualification prior to the award

of a contract, as outlined above, may file a complaint with the Executive Director of the DMWBD (“Director”) within five (5) days of receiving such a notice. The contractor shall serve a copy of its complaint upon the Director and the MTA Agency by personal service or certified mail, return receipt requested.

After the contract has been awarded, a contractor who is notified by the MTA Agency that its MBE/WBE Utilization Plan is deficient may file a complaint within twenty (20) days of such notice with the Director asserting that the MTA Agency unreasonably: (i) denied in whole or part a request for waiver of a goal; (ii) determined that the contractor has not acted in good faith, has failed, or is failing or refusing to comply with a goal; or (iii) failed to grant or deny a request for waiver within twenty (20) days of its receipt of a completed Form 15A.2.

The procedure and requirements for filing and resolving such a complaint are set forth in the Regulations.

#### **N. REMEDIES FOR CONTRACTOR’S FAILURES**

In the event of a contractor’s willful and intentional failure to comply with the State MBE/WBE Law, the Regulations or the provisions of this contract governing MBE/WBE participation requirements, and in the event the MTA Agency elects not to follow the procedures set forth in paragraph U below, the contractor shall be liable to the MTA Agency for liquidated damages in an amount equal to fifty percent (50%) of the difference between the dollar amount of MBE/WBE participation set forth in the contractor’s approved MBE/WBE Utilization Plan and the actual dollar amount credited by the MTA Agency for such participation. Such a willful and intentional failure on the part of the contractor shall also constitute a breach of this contract and the MTA Agency may avail itself of such other remedies as are provided in the contract or at law or equity on account of such breach.

#### **O. MBE/WBE MODIFICATIONS**

In the event that a contractor wishes to modify its MBE/WBE Utilization Plan (Form 15A.1) after its submission or after a contract is awarded, then the contractor must notify the MTA Agency Manager, in writing, and request approval for the modification. A prime contractor may not, without the MTA Agency’s prior consent, terminate for convenience a MBE or WBE subcontractor approved under this contract and then perform the work of the contract with its own forces or those of an affiliate. A modification includes any change to items of work, material, services, subcontract value or MBE/WBE firms, which differ from those identified on the approved MBE/WBE Utilization Plan (Form 15A.1). When a MBE/WBE subcontractor is terminated or fails to complete its work for any reason, the prime contractor must make good faith efforts to find another MBE/WBE subcontractor to substitute for the original MBE/WBE. These good faith efforts must be directed at finding other MBE/WBEs to perform at least the same amount of work under the contract as the former MBE/WBE to the extent needed to meet the contract goal. The contractor must provide the MTA Agency Manager with any and all documentation and information as

may be requested with respect to the modification, which, at a minimum must include the documentation detailed in Section 142.8(a) of the Regulations. If the MTA Department of Diversity and Civil Rights determines that the prime contractor failed to make good faith efforts, the MTA Agency may avail itself of the remedies included in this contract.

**P. EEO/NON-DISCRIMINATION**

1. The bidder agrees as a precondition to entering into a valid and binding contract, not to discriminate against any employee or applicant for employment for work under this contract, or any subcontract hereunder, by reason of race, creed, color, national origin, sex, age, disability or marital status, and that it shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its workforce on this contract. The bidder agrees to undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal opportunities without discrimination. For these purposes, affirmative action shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion transfer, layoff, or termination and rates of pay or other forms of compensation.
2. The bidder shall submit prior to the award of this contract, an equal employment opportunity (“EEO”) policy statement to the MTA Agency within seven days of receiving a notice of selection. The bidder’s EEO policy statement must include the following language:
  - a. The contractor will not discriminate against any employee or applicant for employment, will undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination, and shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its workforce on the contract.
  - b. The contractor will state in all solicitations or advertisements for employees that in the performance of this contract, all qualified applicants will be afforded equal employment opportunities without discrimination.
  - c. At the request of the MTA Agency, the bidder/contractor shall request each employment agency, labor union or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union or representative will not discriminate and that such employment agency, labor union or representative will affirmatively cooperate in the implementation of the contractor’s obligations herein.
  - d. Except for construction contracts, prior to an award of a contract, the bidder shall submit to the MTA Agency a staffing plan of the anticipated work force to be utilized on the contract or, when required, information on the contractor’s total

work force, including apprentices, broken down by specific ethnic background, gender, and Federal occupational categories or other appropriate categories specified by the MTA Agency. The information must be submitted on the Staffing Plan Form.

- e. After the award of the contract, the contractor shall submit to the MTA Agency a workforce utilization report, in a form and manner required by the MTA Agency, of the work force actually utilized on the contract, broken down by specific ethnic background, gender, and Federal occupational categories or other appropriate categories specified by the MTA Agency.
  - f. The contractor shall include these provisions in every subcontract for work performed in connection with this contract in such manner that the requirements of these provisions will be binding on each subcontractor as to work in connection with the contract, including the requirement that subcontractors shall undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status, and when requested, provide to the contractor information on the ethnic background, gender, and Federal occupational categories of the employees to be utilized on the contract.
- 3. Upon a written request, the MTA Department of Diversity and Civil Rights shall supply contractors with labor force availability data, for specific job titles that fall within the relevant occupational categories. Contractors may use this data to identify, recruit and retain minority group members and women for participation on this contract.
  - 4. The requirements of this paragraph shall not apply to any employment or application for employment outside New York State or solicitations or advertisements thereof, or any existing employment programs outside New York State.

#### **Q. EEO SUBMISSION REQUIREMENTS**

The apparent low bidder will be required to submit an EEO-1 Form within seven calendar days after it receives verbal notification of the selection. All other bidders must submit the document within seven (7) calendar days of the MTA Agency Manager's verbal request. The MTA Agency Manager will confirm, in writing, any verbal notification. However, the time frame for bidder's response is based upon the date of the verbal notification. Upon written request, the MTA Agency Manager may extend the deadline for submission of an EEO-1 Form or an EEO Policy Statement. If a bidder does not submit an EEO-1 Form, the bid may be rejected unless reasonable justification for such failure is provided in writing or a commitment is made to provide such document by a date certain established by the MTA Agency. Requirements of this section will also be binding on each subcontractor.

#### **R. CONTRACTOR COMPLIANCE REPORTING**

The MTA Department of Diversity and Civil Rights is responsible for determining compliance by the contractor with the EEO/nondiscrimination obligations and MBE/WBE goal established in the contract. The MTA Department of Diversity and Civil Rights may determine that the contractor is complying with the EEO/nondiscrimination obligations and MBE/WBE goals set forth in the MBE/WBE Utilization Plan (Form 15A.1) by examining reports received from a contractor, on-site inspections, progress meetings regarding work required by the contract, or other MTA Agency actions taken in the ordinary course of administering the contract.

## **S. REPORTING AND RECORDKEEPING**

1. The contractor shall submit to the MTA Agency documentation concerning its performance in meeting the MBE/WBE goal during the term of the contract.
  - a) If the duration of this contract is less than one (1) year, within sixty (60) days of the award date of this contract, unless extended by the MTA Agency in writing, the contractor must enter into written subcontract agreement(s) with the MBE/WBEs listed in its MBE/WBE Utilization Plan Form (Form 15A. 1) and accompanying Intent to Perform as a Subcontractor/Subconsultant Form (Form 15A.4) or with substitutes approved by the MTA Agency.
  - b) If the duration of this contract is one (1) year or more, not later than thirty (30) days before a subcontractor commences work on the contract, unless extended by the MTA Agency in writing, the contractor must enter into written subcontract agreement(s) with the MBE/WBEs listed in its MBE/WBE Utilization Plan Form (Form 15A.1) and accompanying Intent to Perform as a Subcontractor/Subconsultant Form (Form 15A.4) or with substitutes approved by the MTA Agency.
  - c) The contractor immediately upon execution shall provide a copy of the contractor's executed subcontract agreement(s) with MBE/WBEs to the MTA Agency, with a duplicate copy sent to the MTA Department of Diversity and Civil Rights.
  - d) The contractor must submit updated subcontract agreements with MBE/WBEs any time a significant change to items of work, material, services, or subcontract value occurs.
2. The contractor must submit a work schedule outlining when each MBE/WBE subcontractor will commence and complete work on the contract.
3. The contractor must submit monthly reports on progress toward meeting its MBE/WBE goal by the 10<sup>th</sup> of each month. The Monthly MBE/WBE Progress Reports are to be entered into the New York State Contract System ("NYSCS"). To access the NYSCS go to <http://ny.newnycontracts.com/> . The MTA Agency Manager will provide a guidance document for users.

4. Also, by the 10<sup>th</sup> of each month, the Contractor must enter into NYSCS information on payments that were made during the prior month to MBE/WBEs, at any tier, toward meeting the Contractor's approved MBE/WBE utilization plan and require that its MBE/WBE Subcontractors confirm receipt of such payments through NYSCS
5. The contractor must promptly notify the MTA Agency Manager of any situation in which any progress payment is not made to a MBE/WBE subcontractor or supplier within the time frames set forth in this contract. Nothing herein shall create any obligation on the part of the MTA Agency to pay or to see to the payment of any moneys to any subcontractor or materialman from any contractor nor shall anything provided herein serve to create any relationship in contract or otherwise, implied or expressed, between the subcontractor and materialman and the MTA Agency
6. The contractor must promptly inform the MTA Agency Manager in writing when it has reason to believe its attainment of the MBE/WBE participation goal is in jeopardy. In this regard, the contractor must inform the MTA Agency Manager, in writing, with supporting documentation, immediately upon learning that a MBE/WBE firm is unable or unwilling to perform the subcontracted services.
7. The willful making of false statements or the willful submission to MTA of incorrect information shall be treated by the MTA Agency as a breach of the contract.

#### **T. WORKFORCE UTILIZATION REPORTS**

1. Prior to the award of this contract the bidder shall submit an EEO Policy Statement and a staffing plan, as described in Section 143.3 of the Regulations. Where the work force to be utilized in the contract cannot be separated out from the contractor's and/or subcontractor's total work force, the bidder shall submit to the MTA Agency Manager, instead of the staffing plan, a report of contractor's and/or subcontractor's total work force, including apprentices, broken down by specified ethnic background, gender and Federal occupational categories. The information must be submitted on the Staffing Plan Form. A bidder's failure to submit an EEO Policy Statement and a staffing plan or total work force data shall result in the rejection of the bid unless the bidder provides the MTA Agency with a reasonable justification in writing for such failure or makes a commitment to submit an EEO Policy Statement and a staffing plan or work force data by a date certain established by the MTA Department of Diversity and Civil Rights.
2. After the award of the contract, and where the work force to be utilized in the performance of the contract can be separated from the contractor's and/or subcontractor's total work force the contractor and its subcontractors shall submit a Workforce Utilization Report throughout the life of the contract to the MTA Agency as instructed. Pursuant to Executive Order No. 162 - Ensuring Pay Equity by State Contractors; contractors and subcontractors are required to report separately the gross wages paid to each of their employees for the work performed by such employees on the contract on a monthly/quarterly basis as applicable. Contractors and subcontractors

must report only gross wages for work on the contract paid to employees during the period covered by the Report Spreadsheet. "Gross Wages" are typically those reported by employers to employees on their wage statements. Gross wages include every form of compensation for employment paid by an employer to his, her or its employees, whether paid directly or indirectly by the employer, including salaries, commissions, bonuses, tips and the reasonable value of board, rent, housing, lodging or similar advantage received. For commodities, service/consulting, professional construction consultant contracts, and construction contracts, the Workforce Utilization Reports shall include the contractor's and subcontractor's work force on the contract broken down by occupational categories, number of employees in each category, hours a contractor's and subcontractor's employees worked on activities related to the contract, ethnic background, gender, and gross wages. For construction contracts the Workforce Utilization Reports shall be submitted on a monthly basis throughout the life of the contract. For all other contracts the contractor shall submit Workforce Utilization Reports on a quarterly basis throughout the life of the contract. The information must be submitted on the standard Workforce Utilization Form provided by the MTA.

3. During the lifetime of the contract, the contractor shall undertake or continue existing EEO programs and shall ensure that all subcontractors comply with the EEO requirements.

**U. COMPLAINT BY MTA AGENCY AGAINST CONTRACTOR TO NEW YORK STATE DEPARTMENT OF ECONOMIC DEVELOPMENT – FAILURE TO COMPLY WITH THE MBE/WBE PROGRAM OR BAD FAITH, WILLFUL AND INTENTIONAL FAILURE TO COMPLY**

In the event the MTA Agency determines that the contractor has failed to comply with the State MBE/WBE Law, the Regulations or this contract, including that contractor has acted in bad faith or has willfully and intentionally failed to comply with the same and elects not to enforce its rights as set forth in Paragraph N, above, the MTA Agency may file a complaint with the Director pursuant to Executive Law, Section 316, seeking specified remedies, which include, but are not limited to, the imposition of various sanctions, fines or penalties against the contractor. The procedure and requirements with respect to filing and resolving any such complaint are set forth in the Regulations. The contractor is hereby put on notice that the penalties imposed by the Director for any violation which is premised upon either a fraudulent or intentional misrepresentation by the contractor or the contractor's willful and intentional disregard of the minority and women-owned participation requirement included in the contract may include a determination that the contractor shall be ineligible to submit a bid to any contracting State agency, which is defined in the State MBE/WBE Law and the Regulations to include any MTA Agency, and many other non-MTA agencies, or be awarded any State agency contract for a period not to exceed one (1) year following the final determination; provided however, if a contractor has previously been determined to be ineligible to submit a bid pursuant to applicable regulations, the penalties imposed for any subsequent violation, if such violation occurs within five (5) years of the first violation, may include a determination that the contractor shall be ineligible to submit a bid to any contracting State agency or be awarded

any State agency contract for a period not to exceed five (5) years following the final determination.

**V. SUBSEQUENT RESPONSIBILITY DETERMINATIONS**

The MTA Agency may take into account information regarding a contractor's compliance with the MBE/WBE program requirements under this contract, including, but not limited to its failure to meet goals or to demonstrate good faith efforts to meet same, etc. as well as information of willful or intentional failures, fraud or intentional misrepresentations on the part of the contractor, as described in the State MBE/WBE Law and Regulations, in rendering determinations as to whether the contractor, having submitted a bid in connection with future contract solicitations, should be found to be a responsible bidder, as required pursuant to Section 1209 or 1265-a, as applicable, of the Public Authorities Law.

**W. PROHIBITION OF AGREEMENTS TO RESTRICT COMPETITION**

Agreements between a bidder and a MBE/WBE firm in which the MBE/WBE firm agrees not to provide subcontracting quotations to any other bidders are prohibited.



CONTRACT NO. and TITLE: \_\_\_\_\_ CONTRACT VALUE \$ \_\_\_\_\_

# MBE/WBE UTILIZATION PLAN FORM

(Form 15A.1)

**INSTRUCTIONS:** See Section IV, paragraph 6 of the Contract Documents

Name, Address, Telephone Number of MBE/WBE (including name of contact person, Federal I.D.# or Social Security Number)	Indicate if MBE or WBE	Description of Work, Products and/or Services to be provided	Agreed Dollar Amount of MBE/WBE Subcontract	MBE/WBE Projected Start and Completion Date

If the Proposer/Bidder is a corporation, partnership, or joint venture, this form must be signed respectively, by the president of the corporation, a general partner, or the president/general partner of one of the joint ventures. If it is signed by anyone else, you must include appropriate proof (such as certified copy of the by-laws, partnership agreement or joint venture agreement) which confirms that the person signing this form is authorized to do so. By signing below, the Proposer/Bidder authorizes the Authority to verify all information provided on this form.

PROPOSER/BIDDER: \_\_\_\_\_ FEDERAL IDENTIFICATION NUMBER: \_\_\_\_\_  
AUTHORIZED SIGNATURE: \_\_\_\_\_ NAME/TITLE: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

TELEPHONE NUMBER: \_\_\_\_\_ DATE: \_\_\_\_\_

**REQUEST FOR TOTAL OR PARTIAL WAIVER OF MBE/WBE GOAL(S)  
PURSUANT TO MBE/WBE UTILIZATION PLAN FORM  
(Form 15A.2)**

PROPOSER/BIDDER/CONTRACTOR:

Contract Number: \_\_\_\_\_ Total Contract Dollar Value: \_\_\_\_\_

A Proposer/Bidder/Contractor failing to achieve the MBE/WBE goal(s) as specified in the Contract Documents must submit this form (Request for Total or Partial Waiver of MBE/WBE Goal(s) -Form 15A.2) and the documentation of good faith efforts specified in Part II of this form, at the time provided for the submission of the MBE/WBE Utilization Plan (Form 15A.1), or if the contract is already awarded, as soon as the Contractor realizes that it will not achieve a goal, or prior to final payment on the contract whichever is sooner.

**PART I. REQUEST FOR WAIVER OF MBE/WBE GOAL(S)**

**INSTRUCTIONS:** If the Proposer/Bidder/Contractor is requesting a total waiver of one or both goals, Section A must be completed. If the proposer/contractor is requesting a partial waiver of one or both goals, Section B must be completed. In requesting a partial waiver, the Proposer/Bidder/Contractor must specify MBE and/or WBE goal percentage(s) it is committed to achieving.

Section A - Total Waiver of MBE/WBE Goal(s)

I, \_\_\_\_\_, hereby request a total waiver of the:  
(Name of Proposer/Bidder/Contractor)

(Check the appropriate box or boxes)

- ☐ MBE goal as specified in the Contract Documents
- ☐ WBE goal as specified in the Contract Documents

Section B - Partial Waiver of MBE/WBE Goals)

I, \_\_\_\_\_, hereby request a partial waiver of the:  
(Name of Proposer/Bidder/Contractor)

(Check the appropriate box or boxes)

- ☐ MBE goal as specified in the Contract Documents
- ☐ WBE goal as specified in the Contract Documents

I, \_\_\_\_\_, commit to achieving an MBE goal of \_\_\_\_\_ %.  
(Name of Proposer/Bidder/Contractor)

I, \_\_\_\_\_, commit to achieving an WBE goal of \_\_\_\_\_ %.  
(Name of Proposer/Bidder/Contractor)

**PART II. GOOD FAITH EFFORTS DOCUMENTATION**

**INSTRUCTIONS:** A Proposer/Bidder/Contractor requesting a request for a total or partial waiver of MBE and/or WBE goal(s) must submit with this form, full and detailed explanation and documentation which specifically identifies the Proposer/Bidder/Contractor's efforts to obtain MBE/WBE participation on this Authority contract.

The Proposer/Bidder/Contractor must provide the information and support documentation specified in Part II of this form (SEE REVERSE SIDE OF THIS FORM), and any other information it believes will assist the Authority in its review of the Request for Total or Partial Waiver of MBE/WBE Goal(s).

- (1) The names of general circulation, trade association and women-oriented publications in which bids were solicited for purposes of complying with goal requirements established for minority and women-owned business enterprise participation;
- (2) The dates bid solicitations for minority and women-owned business participation were published in any of the publications named pursuant to paragraph (1) and the text of the bid solicitations;
- (3) A list of minority and women-owned business enterprises appearing in the State Directory which were solicited in writing to provide bids for purposes of complying with the contract goal requirements for minority and women-owned business enterprise participation;
- (4) Proof of dates on which such solicitations were made in writing and copies of solicitations made, or a sample copy of the solicitation if an identical solicitation was made of all minority and women-owned business enterprise;
- (5) Copies of responses made by minority and women-owned business enterprises to solicitations made by the contractor;
- (6) A description of any contract documents, plans, or specifications made available to minority and women-owned business enterprises for purposes of soliciting their bids, and the dates and manner in which these documents were made available;
- (7) Documentation of any negotiations between the contractor and minority and women-owned business enterprise participation;
- (8) A statement setting forth the contractor's basis for requesting a partial or total waiver;
- (9) Written discussion of the relevance of the following items to the contractor's request for a partial or total waiver of MBE/WBE contract goal(s) specified in the Contract Documents:
  - a) The number and types of minority or women-owned business enterprises located in the region in which the contract is to be performed;
  - b) The total dollar value of this contract;
  - c) The scope of work to be performed;
  - d) The project size;
  - e) The project term;
  - f) The availability of other business enterprises located in the region;
  - g) The financial ability of minority and women-owned business enterprises located outside the region to perform on the contract
- 10) Identify terms and conditions offered to minority and women-owned business enterprises, and compare how those subcontract terms and conditions compare to those offered in the ordinary course of the contractor's business and to other subcontractors of the contractor.
- 11) Identify efforts made by the contractor to reasonably structure the contract scope of work for purposes of subcontracting with minority and women-owned enterprises;
- 12) Identify actions taken to contact and assess the financial ability of minority and women-owned business enterprises located outside of the region in which the contract scope of work is to be performed; and
- 13) Any other information determined relevant by the Authority (if and when requested) or the contractor.

By signing this form, the person individually and on the behalf of the Proposer/Bidder/Contractor represents to the Authority that the information supplied to the Authority is truthful, accurate, complete and not misleading.

Authorized Signature: \_\_\_\_\_ Title:

Firm/Company Name:

Address:

Telephone Number: \_\_\_\_\_ Date:

# INTENT TO PERFORM AS A SUBCONTRACTOR/SUBCONSULTANT (MBE/WBE FORM 15A.4)

CONTRACT NUMBER: \_\_\_\_\_ CONTRACT TITLE: \_\_\_\_\_

NAME OF PRIME BIDDER/PROPOSER: \_\_\_\_\_

The undersigned intends to perform work in connection with the above project as: [check one]

- ☐ A subcontractor
- ☐ A subconsultant
- ☐ A second tier subcontractor

**Note:** Pursuant to NYS Executive Law Article 15-A, Minority and Women-owned Business Enterprise (MBE/WBE) firms projected to participate in the MTA's MBE/WBE Program must be certified as either an MBE or a WBE by the Empire State Development Corporation (ESDC) in order for the firm's participation to be credited toward an MBE or WBE goal. Only firms certified by ESDC as an MBE or a WBE can be utilized to meet an MBE or WBE goal.

SUBCONTRACT AMOUNT: \$ \_\_\_\_\_

The undersigned is prepared to perform the following work and/or supply the following material for the above project.

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**Note:** If applicable, please state the amount and percentage of work you intend to subcontract out to other subcontractors/vendors (both MBE/WBE and non-MBE/WBE firms).

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The undersigned intends to enter into a formal agreement for the above work with the named bidder/proposer conditioned upon the named bidder/proposer being awarded this contract by the MTA or any of its affiliated agencies.

_____	By: _____	_____	_____
Name of MBE/WBE Firm	Name & Title of Authorized Signatory	Signature of Authorized Representative	Date
<small>(Please Print or Type)</small>			

## **APPENDIX D (II). SERVICE DISABLED VETERAN-OWNED BUSINESS SUBMISSION REQUIREMENTS**

### **A. SERVICE DISABLED VETERAN-OWNED BUSINESS**

Service Disabled Veteran-Owned Business (SDVOB) Goals will be used for MTA-funded Contracts, if a Contract has an estimated value in excess of \$25,000 for commodities, equipment, material, services, supplies, or any combination of the foregoing; or in excess of \$100,000 for construction and construction services *and* the Contract has been assigned SDVOB GOALS

### **B. PARTICIPATION OPPORTUNITIES FOR NEW YORK STATE CERTIFIED SERVICE-DISABLED VETERAN OWNED BUSINESSES**

Article 17-B of the New York State Executive Law provides for more meaningful participation in public procurement by certified Service-Disabled Veteran-Owned Businesses (“SDVOBs”), thereby further integrating such businesses into New York State’s economy. The Authority recognizes the need to promote the employment of Service-Disabled veterans and to ensure that certified Service-Disabled Veteran-Owned Businesses have opportunities for maximum feasible participation in the performance of Authority contracts.

In recognition of the service and sacrifices made by Service-Disabled veterans and in recognition of their economic activity in doing business in New York State, Bidders and Proposers are expected to consider SDVOBs in the fulfillment of the requirements of the Contract. Such participation may be as subcontractors or suppliers, as protégés, or in other partnering or supporting roles.

### **C. CONTRACT GOALS**

1. The goals specified for the utilization of SDVOBs expressed as a percentage of the total Contract price, including change orders issued pursuant to the changes provisions of the Contract, are:

**6.0%** for SDVOB

Goal based on the current availability of qualified SDVOBs. For purposes of providing meaningful participation by SDVOBs, the Bidder/Proposer/Contractor/Consultant should reference the directory of New York State Certified SDVOBs found on the New York State Office of General Services web site at: [http://ogs.ny.gov/Core/docs/CertifiedNYS\\_SDVOB.pdf](http://ogs.ny.gov/Core/docs/CertifiedNYS_SDVOB.pdf). Questions regarding compliance with SDVOB participation goals should be directed pre-award to the designated Procurement Representative and post-award to the Project Manager or Construction Manager. Additionally, Contractor/Consultant is encouraged to contact the Office of General Services' Division of Service-Disabled Veterans' Business Development at 518-474-2015 or [VeteransDevelopment@ogs.ny.gov](mailto:VeteransDevelopment@ogs.ny.gov) to discuss additional methods of maximizing participation by SDVOBs on the Contract.

2. Contractor/Consultant must document "good faith efforts" to provide meaningful participation by SDVOBs as subcontractors/subconsultants or suppliers in the performance of the Contract (see Paragraph 4 below).

#### **D. SDVOB UTILIZATION PLAN**

1. In accordance with 9 NYCRR § 252.2(i), the apparent low Bidder shall, by close of business on the 7th calendar day after the public Bid opening date, submit to the Procurement Representative a completed SDVOB Utilization Plan on Form SDVOB 100. All Proposers are required to submit a completed SDVOB Utilization Plan on Form SDVOB 100 with their technical Proposal.
2. The Utilization Plan shall list the SDVOBs that the Bidder/Proposer intends to use to perform the Contract, a description of the work that the Bidder/Proposer intends the SDVOB to perform to meet the goals on the Contract, the estimated dollar amounts to be paid to an SDVOB, or, if not known, an estimate of the percentage of Contract work the SDVOB will perform. By signing the Utilization Plan, the Bidder/Proposer acknowledges that making false representations or providing information that shows a lack of good faith as part of, or in conjunction with, the submission of a Utilization Plan is prohibited by law and may result in penalties including, but not limited to, termination of a Contract for cause, loss of eligibility to

submit future bids or proposals, and/or withholding of payments. Any modifications or changes to the agreed participation by SDVOBs after the Contract award and during the term of the Contract must be reported on a revised SDVOB Utilization Plan and submitted to the MTA Department of Diversity and Civil Rights.

3. The MTA Department of Diversity and Civil Rights will review the submitted SDVOB Utilization Plan and advise the Bidder/Proposer/Contractor/Consultant of acceptance or issue a notice of deficiency within 20 calendar days of receipt.
4. If a notice of deficiency is issued, Bidder/Proposer/Contractor/Consultant agrees that it shall respond to the notice of deficiency, within seven business days of receipt, by submitting to the MTA Department of Diversity and Civil Rights a written remedy in response to the notice of deficiency. If the written remedy that is submitted is not timely or is found by the MTA Department of Diversity and Civil Rights to be inadequate, the MTA Department of Diversity and Civil Rights shall notify the Bidder/Proposer/Contractor/Consultant and direct the Bidder/Proposer/Contractor/Consultant to submit, within five business days of notification by the MTA Department of Diversity and Civil Rights, a request for a partial or total waiver of SDVOB participation goals on Form SDVOB 200. Failure to file the waiver form in a timely manner may be grounds for disqualification of the Bid or Proposal.
5. The Authority may disqualify a Bidder or a Proposer as non-responsible under the following circumstances:
  - (a) If a Bidder/Proposer fails to submit an SDVOB Utilization Plan;
  - (b) If a Bidder/Proposer fails to submit a written remedy to a notice of deficiency;
  - (c) If a Bidder/Proposer fails to submit a request for waiver; or
  - (d) If DDCR determines that the Bidder/Proposer has failed to document good faith efforts.

6. If awarded a Contract, Contractor/Consultant certifies that it will follow the submitted SDVOB Utilization Plan for the performance of SDVOBs on the Contract pursuant to the prescribed SDVOB contract goals set forth above.
7. Contractor/Consultant further agrees that a failure to use SDVOBs as agreed in the Utilization Plan shall constitute a material breach of the terms of the Contract. Upon the occurrence of such a material breach, the Authority shall be entitled to any remedy provided herein, including but not limited to, a finding of Contractor/Consultant non-responsibility.

#### **E. REQUEST FOR WAIVER**

- 1. Prior to submission of a request for a partial or total waiver, Bidder/Proposer/Contractor/ Consultant shall speak pre-award to the designated Procurement Representative and post-award to the Project Manager or Construction Manager for guidance.**
2. In accordance with 9 NYCRR § 252.2(m), a Bidder, Proposer, Contractor or Consultant that is able to document good faith efforts to meet the goal requirements, as set forth in Paragraph 4 below, may submit a request for a partial or total waiver on Form SDVOB 200, accompanied by supporting documentation. A Bidder/Proposer may submit the request for waiver at the same time it submits its SDVOB Utilization Plan. If a request for waiver is submitted with the SDVOB Utilization Plan and is not accepted by the MTA Department of Diversity and Civil Rights at that time, the provisions of Paragraph 2 (C), (D) & (E) will apply. If the documentation included with the Bidder's, Proposer's, Contractor's or Consultant's waiver request is complete, the MTA Department of Diversity and Civil Rights shall evaluate the request and issue a written notice of acceptance or denial within 20 calendar days of receipt.
3. Contractor/Consultant shall attempt to utilize, in good faith, the SDVOBs identified within its SDVOB Utilization Plan, during the performance of the Contract. Requests for a partial or total waiver of established goal requirements made subsequent to Contract award may be made at any time during the term of the Contract to the MTA Department of Diversity and Civil Rights, but must be made no later than prior to the submission of a request for final payment on the Contract.



4. If the MTA Department of Diversity and Civil Rights, upon review of the SDVOB Utilization Plan and Monthly SDVOB Compliance Report (Form SDVOB 101) determines that Contractor/Consultant is failing or refusing to comply with the Contract goals and no waiver has been issued in regards to such non-compliance, the MTA Department of Diversity and Civil Rights may issue a notice of deficiency to the Contractor/Consultant. The Contractor/Consultant must respond to the notice of deficiency within seven business days of receipt. Such response may include a request for partial or total waiver of SDVOB contract goals. Waiver requests should be sent to the MTA Department of Diversity and Civil Rights.

## **F. REQUIRED GOOD FAITH EFFORTS**

In accordance with 9 NYCRR § 252.2(n), Contractors/Consultants must document their good faith efforts toward utilizing SDVOBs on the Contract. Evidence of required good faith efforts shall include, but not be limited to, the following:

1. Copies of solicitations to SDVOBs and any responses thereto.
2. Explanation of the specific reasons each SDVOB that responded to Bidders/Proposers/Contractors/Consultants' solicitation was not selected.
3. Dates of any pre-bid, pre-proposal, pre-award or other meetings attended by Bidder/Proposer/Contractor/Consultant, if any, scheduled by the MTA Department of Diversity and Civil Rights or the Authority with certified SDVOBs whom the MTA Department of Diversity and Civil Rights or the Authority determined were capable of fulfilling the SDVOB goals set in the Contract.
4. Information describing the specific steps undertaken to reasonably structure the Contract scope of work for the purpose of subcontracting with, or obtaining supplies from, certified SDVOBs.
5. Other information deemed relevant to the waiver request.

## **G. MONTHLY SDVOB CONTRACTOR/CONSULTANT COMPLIANCE REPORT**

In accordance with 9 NYCRR § 252.2(q), Contractor/Consultant is required to report Monthly SDVOB Contractor Compliance to the MTA Department of Diversity and Civil Rights during the term of the Contract for the preceding month's activity,

documenting progress made towards achieving the Contract SDVOB goals. This information must be submitted using Form SDVOB 101, Monthly Compliance Report, and should be completed by the Contractor/Consultant and submitted to the MTA Department of Diversity and Civil Rights, by the 10th day of each month during the term of the Contract, for the preceding month's activity.

The Form SDVOB 101 should be emailed to the MTA Department of Diversity and Civil Rights at: [DDCRMMonthlyParticipationReports@nycr.com](mailto:DDCRMMonthlyParticipationReports@nycr.com). The email subject line should indicate the Contract number for which the Form SDVOB 101 is being submitted.

## **H. BREACH OF CONTRACT AND DAMAGES**

In accordance with 9 NYCRR § 252.2(s), any Contractor/Consultant found to have willfully and intentionally failed to comply with the SDVOB participation goals set forth in the Contract, shall be found to have breached the Contract and Contractor/Consultant shall pay damages as set forth therein.

### **1. SDVOB REPORTING FORMS**

**This contract contains the following forms:**

- FORM SDVOB 100 (SDVOB UTILIZATION PLAN FORM)
- FORM INTENT TO PERFORM AS SUBCONTRACTOR/SUBCONSULTANT (SDVOB)
- FORM SDVOB 200 (APPLICATION FOR WAIVER)
- FORM SDVOB 101 (MONTHLY SDVOB PARTICIPATION REPORT)

# SDVOB UTILIZATION PLAN

(Form SDVOB 100)

☐ Initial Plan   ☐ Revised plan   Contract/Solicitation # \_\_\_\_\_

**INSTRUCTIONS:** This Utilization Plan must contain a detailed description of the supplies and/or services to be provided by each NYS **Certified** Service-Disabled Veteran-Owned Business (SDVOB) under the contract. By submission of this Plan, the Bidder/Contractor commits to making good faith efforts in the utilization of SDVOB subcontractors and suppliers as required by the SDVOB goals contained in the Solicitation/Contract. Making false representations or providing information that shows a lack of good faith as part of, or in conjunction with, the submission of a Utilization Plan is prohibited by law and may result in penalties including, but not limited to, termination of a contract for cause, loss of eligibility to submit future bids, and/or withholding of payments. Firms that do not perform commercially useful functions may not be counted toward SDVOB utilization. Attach additional sheets if necessary.

## BIDDER/CONTRACTOR INFORMATION

### SDVOB Goals In Contract

Bidder/Contractor Name:

NYS Vendor ID:

%

Bidder/Contractor Address (Street, City, State and Zip Code):

Bidder/Contractor Telephone Number:

Contract Work Location/Region:

Contract Description/Title:

## CONTRACTOR INFORMATION

Prepared by (Signature):

Name and Title of Preparer:

Telephone Number:

Date:

Email Address:

***If unable to meet the SDVOB goals set forth in the solicitation/contract, bidder/contractor must submit a request for waiver on the SDVOB Waiver Form.***

SDVOB Subcontractor/Supplier Name:

Please identify the person you contacted:

Federal Identification No.:

Telephone No.:

Address:

Email Address:

Detailed description of work to be provided by subcontractor/supplier:

Dollar Value of subcontracts/supplies/services (When \$ value cannot be estimated, provide the estimated % of contract work the SDVOB will perform): \$ \_\_\_\_\_ or \_\_\_\_\_ %

SDVOB Subcontractor/Supplier Name:

Please identify the person you contacted:

Federal Identification No.:

Telephone No.:

Address:

Email Address:

Detailed Description of work to be provided by subcontractor/supplier:

Dollar Value of subcontracts/supplies/services (When \$ value cannot be estimated, provide the estimated % of contract work the SDVOB will perform): \$ \_\_\_\_\_ or \_\_\_\_\_ %

# ADDITIONAL SHEET (Form SDVOB 100)

Bidder/Contractor Name:		Contract/Solicitation #	
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<b>SDVOB Subcontractor/Supplier Name:</b>			
Please identify the person you contacted:		Federal Identification No.:	Telephone No.:
Address:		Email Address:	
Detailed Description of work to be provided by subcontractor/supplier:			
Dollar Value of subcontracts/supplies/services (When \$ value cannot be estimated, provide the estimated % of contract work the SDVOB will perform): \$ _____ or _____%			

  

<b>SDVOB Subcontractor/Supplier Name:</b>			
Please identify the person you contacted:		Federal Identification No.:	Telephone No.:
Address:		Email Address:	
Detailed Description of work to be provided by subcontractor/supplier:			
Dollar Value of subcontracts/supplies/services (When \$ value cannot be estimated, provide the estimated % of contract work the SDVOB will perform): \$ _____ or _____%			

  

<b>SDVOB Subcontractor/Supplier Name:</b>			
Please identify the person you contacted:		Federal Identification No.:	Telephone No.:
Address:		Email Address:	
Detailed Description of work to be provided by subcontractor/supplier:			
Dollar Value of subcontracts/supplies/services (When \$ value cannot be estimated, provide the estimated % of contract work the SDVOB will perform): \$ _____ or _____%			

  

<b>SDVOB Subcontractor/Supplier Name:</b>			
Please identify the person you contacted:		Federal Identification No.:	Telephone No.:
Address:		Email Address:	
Detailed Description of work to be provided by subcontractor/supplier:			
Dollar Value of subcontracts/supplies/services (When \$ value cannot be estimated, provide the estimated % of contract work the SDVOB will perform): \$ _____ or _____%			

# Intent to Perform as Subcontractor/Subconsultant/Joint Venture (SDVOB)

CONTRACT NUMBER \_\_\_\_\_ CONTRACT TITLE \_\_\_\_\_

NAME OF PRIME BIDDER/PROPOSER \_\_\_\_\_

The undersigned intends to perform work in connection with the above project as (check one):

☐ A subcontractor

☐ A sub-consultant

☐ A Joint Venture

☐ A second tier subcontractor (if required to meet the goal)

**Note:** Pursuant to New York State Article 17-B of the Executive Law, Service-Disabled Veteran-Owned Business (SDVOB) firms projected to participate in the MTA's SDVOB Program must be certified as a SDVOB by New York State Office of General Services for the firm's participation to be credited toward the SDVOB participation goal.

Subcontract Amount \$ \_\_\_\_\_

The undersigned is prepared to perform the following described work and/or supply the material listed in connection with the above project.

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**Note:** If applicable, please state the amount and percentage of work you intend to subcontract out to other subcontractors/vendors (both SDVOB and non-SDVOB firms).

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The undersigned intends to enter into a formal agreement for the above work with the named bidder/proposer conditioned upon the named bidders/proposers being awarded this contract by the MTA or any of its affiliated agencies.

\_\_\_\_\_  
Name of SDVOB Firm

\_\_\_\_\_  
Name & Title of Authorized Signatory

\_\_\_\_\_  
Signature of Authorized Representative

\_\_\_\_\_  
Date

# APPLICATION FOR WAIVER OF SDVOB PARTICIPATION GOAL (Form SDVOB 200)

(must be submitted before requesting final payment on the Contract)

## Section 1: Basic Information

Contractor's Name:		Federal Identification Number:	
Street Address:		E-Mail Address:	
City, State, Zip Code:		Telephone: (     )     -	
Contract Number:		SDVOB CONTRACT GOALS	
		%	

## Section 2: Type of SDVOB Waiver Requested

<input type="checkbox"/> Total	<input type="checkbox"/> Partial	If partial waiver, please enter the revised SDVOB percentage:	%
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Please explain the reason for the waiver request:

## Section 3: Supporting Documentation

Provide the following documentation as evidence of your good faith efforts to meet the SDVOB goals set forth in the contract and in support of your waiver application:

- ☐ **Attachment A.** Copies of solicitations to SDVOBs and any responses thereto.
- ☐ **Attachment B.** Explanation of the specific reasons each SDVOB that responded to Bidders/Contractors' solicitation was not selected.
- ☐ **Attachment C.** Dates of any pre-bid, pre-award or other meetings attended by Contractor, if any, scheduled by NYCT with certified SDVOBs whom NYCT determined were capable of fulfilling the SDVOB goals set forth in the contract.
- ☐ **Attachment D.** Information describing the specific steps undertaken to reasonably structure the contract scope of work for the purpose of subcontracting with, or obtaining supplies from, certified SDVOBs.
- ☐ **Attachment E.** Other information deemed relevant to the request.

## Section 4: Signature and Contact Information

**By signing and submitting this form, the contractor certifies that a good faith effort has been made to promote SDVOB participation pursuant to the SDVOB requirements set forth under the solicitation or Contract. Failure to submit complete and accurate information may result in a finding of noncompliance, non-responsibility, and a suspension or termination of the contract.**

Prepared By: (Signature)	Date:
Name and Title of Preparer (Print or Type)	

For MTA Use Only	
Reviewed By:	Date:
Decision: <div><input type="checkbox"/> Full SDVOB waiver granted <input type="checkbox"/> Partial SDVOB waiver granted; revised SDVOB goal: _____ % <input type="checkbox"/> SDVOB waiver denied</div>	
Approved By:	Date:
Date Notice of Determination Sent:	
Comments	

**BLANK**



CONTRACTOR'S MONTHLY SDVOB COMPLIANCE REPORT (DUE ON THE 10<sup>TH</sup> DAY OF EACH MONTH FOR THE PRECEDING MONTH'S ACTIVITY AS EVIDENCE TOWARDS ACHIEVEMENT OF THE SDVOB GOALS ON THE CONTRACT)  
(Form SDVOB 101)

Contract No.: \_\_\_\_\_

Contractor/Vendor Name, Address and Phone No.:	Contractor/Vendor Federal ID No.:		SDVOB Goals		Reporting Period		
	Description of Project:		%		Month	Year	
Firm Name, Address and Phone Number (List All Firms)	Description of Work or Supplies Provided	Designation		Payment This Month	Contract Amount		
Federal ID No.:		<input type="checkbox"/> SDVOB <input type="checkbox"/> Supplier <input type="checkbox"/> Sub <input type="checkbox"/> Team <input type="checkbox"/> Broker <input type="checkbox"/> Other <input type="checkbox"/> Joint Venture <input type="checkbox"/> No Written Contract <input type="checkbox"/> Written Contract		<input type="checkbox"/> No Payment This Month			
Federal ID No.:		<input type="checkbox"/> SDVOB <input type="checkbox"/> Supplier <input type="checkbox"/> Sub <input type="checkbox"/> Team <input type="checkbox"/> Broker <input type="checkbox"/> Other <input type="checkbox"/> Joint Venture <input type="checkbox"/> No Written Contract <input type="checkbox"/> Written Contract		<input type="checkbox"/> No Payment This Month			
Federal ID No.:		<input type="checkbox"/> SDVOB <input type="checkbox"/> Supplier <input type="checkbox"/> Sub <input type="checkbox"/> Team <input type="checkbox"/> Broker <input type="checkbox"/> Other <input type="checkbox"/> Joint Venture <input type="checkbox"/> No Written Contract <input type="checkbox"/> Written Contract		<input type="checkbox"/> No Payment This Month			
Federal ID No.:		<input type="checkbox"/> SDVOB <input type="checkbox"/> Supplier <input type="checkbox"/> Sub <input type="checkbox"/> Team <input type="checkbox"/> Broker <input type="checkbox"/> Other <input type="checkbox"/> Joint Venture <input type="checkbox"/> No Written Contract <input type="checkbox"/> Written Contract		<input type="checkbox"/> No Payment This Month			
_____ Signature		_____ Print Name and Title		_____ Date			
Submission of this form constitutes the Contractor's acknowledgement as to the accuracy of the information contained herein. Failure to submit complete and accurate information may result in a finding of noncompliance, non-responsibility, suspension and/or termination of the Contract.				For DDCR Use Only			
				Reviewed By:		Date:	

**BLANK**

**APPENDIX K**  
**EXECUTIVE ORDER 177 COMPLIANCE AND CERTIFICATION**

**BIDDERS ARE HEREBY NOTIFIED THAT THIS SOLICITATION IS SUBJECT TO EXECUTIVE ORDER 177 WHICH PROHIBITS NEW YORK STATE AGENCIES, INCLUDING THE METROPOLITAN TRANSPORTATION AUTHORITY (“MTA”), FROM ENTERING INTO CONTRACTS WITH ENTITIES THAT SUPPORT DISCRIMINATION. THIS CERTIFICATION MUST BE SUBMITTED PRIOR TO CONTRACT AWARD ON ALL CONTRACTS FOR GOODS, SERVICES, TECHNOLOGY AND CONSTRUCTION, AND CONTRACT RENEWALS.**

The New York State Human Rights Law, Article 15 of the Executive Law, prohibits discrimination and harassment based on age, race, creed, color, national origin, sex, pregnancy or pregnancy-related conditions, sexual orientation, gender identity, disability, marital status, familial status, domestic violence victim status, prior arrest or conviction record, military status or predisposing genetic characteristics.

The Human Rights Law may also require reasonable accommodation for persons with disabilities and pregnancy-related conditions. A reasonable accommodation is an adjustment to a job or work environment that enables a person with a disability to perform the essential functions of a job in a reasonable manner. The Human Rights Law may also require reasonable accommodation in employment on the basis of Sabbath observance or religious practices.

Generally, the Human Rights Law applies to:

- all employers of four or more people, employment agencies, labor organizations and apprenticeship training programs in all instances of discrimination or harassment;
- employers with fewer than four employees in all cases involving sexual harassment; and,
- any employer of domestic workers in cases involving sexual harassment or harassment based on gender, race, religion or national origin.

**REQUIRED BIDDER CERTIFICATION OF COMPLIANCE WITH EO 177**

In accordance with Executive Order No. 177 (“EO 177”), the Bidder hereby certifies that it does not have institutional policies or practices that fail to address the harassment and discrimination of individuals on the basis of their age, race, creed, color, national origin, sex, sexual orientation, gender identity, disability, marital status, military status, or other protected status under the Human Rights Law.

Executive Order No. 177 and this certification do not affect institutional policies or practices that are protected by existing law, including but not limited to the First Amendment of the United States Constitution, Article 1, Section 3 of the New York State Constitution, and Section 296(11) of the New York State Human Rights Law.

By signing below, Bidder certifies that the statements made above are complete, true, and accurate.

Bidder Name: \_\_\_\_\_

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

Date: \_\_\_\_\_

Print name of signatory: \_\_\_\_\_

Print title of signatory: \_\_\_\_\_

**APPENDIX K**  
**EXECUTIVE ORDER 177 COMPLIANCE AND CERTIFICATION**

**BIDDERS ARE HEREBY NOTIFIED THAT THIS SOLICITATION IS SUBJECT TO EXECUTIVE ORDER 177 WHICH PROHIBITS NEW YORK STATE AGENCIES, INCLUDING THE METROPOLITAN TRANSPORTATION AUTHORITY (“MTA”), FROM ENTERING INTO CONTRACTS WITH ENTITIES THAT SUPPORT DISCRIMINATION. THIS CERTIFICATION MUST BE SUBMITTED PRIOR TO CONTRACT AWARD ON ALL CONTRACTS FOR GOODS, SERVICES, TECHNOLOGY AND CONSTRUCTION, AND CONTRACT RENEWALS.**

The New York State Human Rights Law, Article 15 of the Executive Law, prohibits discrimination and harassment based on age, race, creed, color, national origin, sex, pregnancy or pregnancy-related conditions, sexual orientation, gender identity, disability, marital status, familial status, domestic violence victim status, prior arrest or conviction record, military status or predisposing genetic characteristics.

The Human Rights Law may also require reasonable accommodation for persons with disabilities and pregnancy-related conditions. A reasonable accommodation is an adjustment to a job or work environment that enables a person with a disability to perform the essential functions of a job in a reasonable manner. The Human Rights Law may also require reasonable accommodation in employment on the basis of Sabbath observance or religious practices.

Generally, the Human Rights Law applies to:

- all employers of four or more people, employment agencies, labor organizations and apprenticeship training programs in all instances of discrimination or harassment;
- employers with fewer than four employees in all cases involving sexual harassment; and,
- any employer of domestic workers in cases involving sexual harassment or harassment based on gender, race, religion or national origin.

**REQUIRED BIDDER CERTIFICATION OF COMPLIANCE WITH EO 177**

In accordance with Executive Order No. 177 (“EO 177”), the Bidder hereby certifies that it does not have institutional policies or practices that fail to address the harassment and discrimination of individuals on the basis of their age, race, creed, color, national origin, sex, sexual orientation, gender identity, disability, marital status, military status, or other protected status under the Human Rights Law.

Executive Order No. 177 and this certification do not affect institutional policies or practices that are protected by existing law, including but not limited to the First Amendment of the United States Constitution, Article 1, Section 3 of the New York State Constitution, and Section 296(11) of the New York State Human Rights Law.

By signing below, Bidder certifies that the statements made above are complete, true, and accurate.

Bidder Name: \_\_\_\_\_

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

Date: \_\_\_\_\_

Print name of signatory: \_\_\_\_\_

Print title of signatory: \_\_\_\_\_

## SCHEDULE - A

### **Certification Under Executive Order No. 16 Prohibiting State Agencies and Authorities from Contracting with Businesses Conducting Business in Russia**

Executive Order No. 16 provides that “all Affected State Entities are directed to refrain from entering into any new contract or renewing any existing contract with an entity conducting business operations in Russia.” The complete text of Executive Order No. 16 can be found [here](https://www.governor.ny.gov/executive-order/no-16-prohibiting-state-agencies-and-authorities-contracting-businesses-conducting): <https://www.governor.ny.gov/executive-order/no-16-prohibiting-state-agencies-and-authorities-contracting-businesses-conducting>

The Executive Order remains in effect while sanctions imposed by the federal government are in effect. Accordingly, vendors who may be excluded from award because of current business operations in Russia are nevertheless encouraged to respond to solicitations to preserve their contracting opportunities in case the sanctions are lifted during a solicitation or even after award in the case of some solicitations.

As defined in Executive Order No. 16, an “entity conducting business operations in Russia” means an institution or company, wherever located, conducting any commercial activity in Russia or transacting business with the Russian Government or with commercial entities headquartered in Russia or with their principal place of business in Russia in the form of contracting, sales, purchasing, investment, or any business partnership.

Is Vendor an entity conducting business operations in Russia, as defined above? Please answer by checking one of the following boxes:

- ☐ 1. No, Vendor does not conduct business operations in Russia within the meaning of Executive Order No. 16.
- ☐ 2.a. Yes, Vendor conducts business operations in Russia within the meaning of Executive Order No. 16 but has taken steps to wind down business operations in Russia or is in the process of winding down business operations in Russia. (Please provide a detailed description of the wind down process and a schedule for completion.)
- ☐ 2.b. Yes, Vendor conducts business operations in Russia within the meaning of Executive Order No. 16 but only to the extent necessary to provide vital health and safety services within Russia or to comply with federal law, regulations, executive orders, or directives. (Please provide a detailed description of the services being provided or the relevant laws, regulations, etc.)
- ☐ 3. Yes, Vendor conducts business operations in Russia within the meaning of Executive Order No. 16.

The undersigned certifies under penalties of perjury that they are knowledgeable about the Vendor’s business and operations and that the answer provided herein is true to the best of their knowledge and belief.

Vendor Name: \_\_\_\_\_  
(legal entity)

By: \_\_\_\_\_  
(signature)

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

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

Date: \_\_\_\_\_

## **SCHEDULE D**

### **MTA CYBERSECURITY COMPLIANCE AND CERTIFICATION**

**The attention of all bidders and prospective bidders is drawn to important provisions relating to the following requirements:**

#### **CYBERSECURITY TERMS AND CONDITIONS**

The **CYBERSECURITY TERMS AND CONDITIONS** contain the cybersecurity requirements to which the bidder must adhere with respect to the Contract. In the event that a bidder has questions, clarifications or proposed exceptions to such CYBERSECURITY TERMS AND CONDITIONS, the bidder should raise such matters no later than seven (7) business days prior to the Bid Deadline. Any such responses shall be addressed in an addendum issued by the Authority. Bidders should note if exceptions are asserted in a bidder's bid, the bid shall be deemed non-responsive and the bidder shall be ineligible for award.

## Metropolitan Transportation Authority

### CYBERSECURITY TERMS AND CONDITIONS – SHORT FORM LITE

[for use with inventory contracts and services with no access to MTA networks and data]

#### A. DEFINITIONS.

1. Authority: shall mean the Metropolitan Transportation Authority (“MTA”) and each of its subsidiaries and affiliates.
2. Authority Data: shall mean the following regardless of whether it is contained in existing or newly created in the future physical or electronic media at rest or in motion, any and all:
  - a. Personal Information as such term is defined herein;
  - b. all other data, information and documentation of the Authority including current and revised technology assets and systems, procedures and methodologies for designing implementing or maintaining in general and specifically, with information technology and physical and electronic security;
  - c. the Authority’s owned, licensed, or subscribed inventions, ideas and designs, design documents, equipment technology and software;
  - d. reports and studies whether prepared by Authority, the Contractor or a third-party and whether in development or completed; and data, information, documentation and material prepared by or for the Contractor, any subcontractor, or by their respective consultants, agents, officers or employees in connection with performance of the Work, whether prior or subsequent to execution of this Contract or Agreement;
  - e. results of the Work; and
- f. Contract information, which is not subject to records disclosures laws such as Public Officers Law Article 6 (Freedom of Information Law), that is provided by or generated for the Authority under the Contract.
3. Contract: shall mean the agreement entered into between the Authority and the Contractor setting forth the Work, and to which these Cybersecurity Terms and Conditions are attached and made a part thereof.
4. Contractor: shall mean the vendor, contractor, individual or organization that enters into the Contract or Agreement to perform the Work pursuant to the Contract Documents.
5. Covered Contractor Information System: shall mean an information system that is owned or operated by a contractor that processes, stores, or transmits Authority Data.
6. Information or information: shall mean any communication or representation of knowledge such as facts, data, or opinions, in any medium or form, including textual, numerical, graphic, cartographic, narrative, or audiovisual.
7. Personal Information or Personal Identifiable Information (PII): shall mean any representation of information that permits the identity of an individual to whom the information applies to be reasonably inferred by either direct or indirect means; information: (i) that directly identifies an individual (e.g., name, address,

social security number or other identifying number or code, telephone number, email address, code, symbol, mark or other identifier) or (ii) by which the Authority or other agency intends to identify specific individuals in conjunction with other data elements, i.e., indirect identification. These data elements may include a combination of gender, race, birth date, geographic indicator, and other descriptors; and information permitting the physical or online contacting of a specific individual shall be deemed Personally Identifiable Information. Such Personal Information can be maintained in either paper, electronic or other media.

8. Security Incident: shall mean (i) an occurrence that actually or imminently jeopardizes, without lawful authority, the confidentiality, integrity, or availability of a Covered Contractor Information System or any Contractor system that connects to or otherwise impacts a Covered Contractor Information System; or (ii) constitutes a violation or imminent threat of violation of law, security policies, security procedures, or acceptable use policies that impact a Covered Contractor Information System or any Contractor system that connects to or otherwise impacts a Covered Contractor Information System.
9. Work: shall mean all the required obligations of the Contractor under the Contract or Agreement including but not limited to, the performance of any labor or services, the supplying of any goods, materials or personnel, the furnishing of any equipment and/or supplies or any other deliverables (e.g., parts, assemblies, kits, specially manufactured items) to the Authority as required by the Contract Documents including any scope of work and any modifications to the Contract, if any.

## **B. NON-DISCLOSURE.**

The Contractor shall not furnish or disclose or allow its employees or agents, or subcontractors or their employees or agents, to furnish or disclose to any person or entity, any Authority Data without prior, written consent of the Authority. Notwithstanding the foregoing, the Contractor may furnish or disclose Authority Data to its employees or subcontractors as necessary for the performance of the Work.

## **C. PROTECTION OF DATA.**

1. The Contractor shall have in place designated personnel to work with the Authority during any Security Incident response (the "Cyber Incident Response Team").
2. If the Work involves the Contractor's access to PII as defined herein, then the Contractor shall comply with the New York Stop Hacks and Improve Electronic Data Security Act (also known as the SHIELD Act), which amends section 899-aa of the New York General Business Code and adds Section 899-bb, in the performance of the Work, as applicable, which, among other things, imposes on entities identified in the SHIELD Act:
  - a. particular data breach notification requirements; and
  - b. data security safeguards.
3. The Contractor shall implement and maintain reasonable and appropriate measures to safeguard non-public Authority Information exchanged under this Agreement from unauthorized access, disclosure, alteration, and destruction on Covered Contractor Information Systems.
4. The Contractor shall (i) maintain its email system and external websites processing Authority Information up-to-date with security patches and updates to mitigate



vulnerabilities; and (ii) use protective software such as modern anti-virus and multi-factor authentication for remote access to its Covered Contractor Information Systems.

5. The Contractor agrees to use encrypted communication channels when transmitting non-public Authority Information via email or other electronic means.

**D. NOTIFICATION TO MTA OF BREACH OF AUTHORITY DATA.**

1. Unless otherwise provided by law or as further detailed in the Contract, in the event of any act, error or omission, negligence, misconduct, or breach that compromises or is suspected to compromise the security, confidentiality, or integrity of Authority Data or the physical, technical, administrative, or organizational safeguards put in place by the Contractor that relates to the protection of the security, confidentiality, or integrity of Authority Data, the Contractor shall, as applicable:
  - a. promptly notify (1) the Project Manager and (2) the Authority by email to ThreatIntel@mtahq.org, as well as verbally by phone at (646) 252-7300 as soon as practicable but no later than twenty-four (24) hours after initially becoming aware of such occurrence;
  - b. perform or take any other actions required to comply with applicable law as a result of the occurrence;
  - c. cooperate with the Authority in investigating the occurrence, including making available all relevant records, files, data reporting, and other materials reasonably required to comply with applicable law, in referring the occurrence to appropriate law enforcement agencies, and in issuing

appropriate press releases and responding to the media;

**E. DESTRUCTION OF DATA.**

1. All Authority Data marked as “sensitive” including, but not limited to, all copies and reproductions thereof and all documents and materials derived from such sensitive Authority Data including any data in electronic form (i.e. cloud hosted Authority Data, etc.) provided to, prepared by or for the Contractor or any of its employees, subcontractors, agents and representatives (collectively, the “Contractor Personnel”) shall, irrespective of whether such is in writing or stored electronically, be returned to the Authority or irrevocably destroyed by the Contractor and the Contractor Personnel, at the Authority’s request or until such Authority Data is no longer subject to retention pursuant to the Contractor’s own internal retention policies, whichever comes first. The Contractor shall, and shall cause its Contractor Personnel to, irrevocably destroy the Authority Data by: (i) shredding physical documents; (ii) wiping clean the device memory on all equipment, machines, databases, servers, cloud storage or other electronic media on which the Authority Data is located; and (iii) sanitize storage media, as well as temporary files and backup files on which the Authority Data is stored.
2. Notwithstanding the foregoing, the Contractor may retain copies of sensitive Authority Data that are stored in backups provided that all such retained data (i) is retained in accordance with their retention policy; (ii) remains subject to the confidentiality obligations contained in Contract Documents; (iii) is not accessed by the Contractor except (a) pursuant to applicable legal requirements and/or (b) in accordance with the Contractor’s disaster recovery requirements, if applicable, and

(iv) is destroyed in the manner described herein at the end of the retention period pursuant to the Contractor's record retention policy.

3. The Authority may request certification that destruction has been irrevocably completed for all primary, backup and any other applicable systems or mediums from the Contractor which shall be promptly provided by the Contractor for itself and for the Contractor Personnel; but in no event, not later than fourteen (14) days following the Authority's request.

**F. LIMITATION ON TRANSMISSION OF AUTHORITY DATA OUTSIDE OF THE UNITED STATES.**

1. The Contractor represents that it will not perform Work or store Authority Data, in any of the countries listed in the US Dept. of the Treasury OFAC Sanctions Programs and Country Information List ("Sanctions List"), which Sanctions List may be updated from time to time: <https://ofac.treasury.gov/sanctions-programs-and-country-information>, or any other country identified by the Authority at <https://new.mta.info/doing-business-with-us/procurement/guide-for-contractors-and-suppliers>. The Authority will not approve the storage of Authority Data in any country on the Sanctions List.

**G. REQUIREMENTS FOR SOFTWARE, HARDWARE, FIRMWARE AND OTHER TECHNOLOGICAL COMPONENTS.**

In the event the Work is modified to include firmware or software, the Authority reserves the right to include additional cybersecurity requirements relevant to the expanded scope of Work.

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**BIDDER CERTIFICATION OF COMPLIANCE**  
**WITH METROPOLITAN TRANSPORTATION AUTHORITY (MTA) CYBERSECURITY**

BIDDERS ARE HEREBY NOTIFIED THAT THIS SOLICITATION IS SUBJECT TO THIS CERTIFICATION OF COMPLIANCE, WHICH REQUIRES BIDDERS TO ACKNOWLEDGE AND CERTIFY COMPLIANCE WITH THE MTA CYBERSECURITY REQUIREMENTS AND THE MTA CYBERSECURITY TERMS AND CONDITIONS (COLLECTIVELY, "CYBERSECURITY REQUIREMENTS"). THIS CERTIFICATION SHALL BE INCORPORATED HEREIN BY REFERENCE INTO THE CONTRACT DOCUMENTS UPON AWARD, OR ISSUANCE, OF THE CONTRACT.

The Bidder hereby acknowledges and agrees as follows:

1. The Bidder has read, understands and shall comply with the MTA Cybersecurity Requirements in the performance of the work under the contract resulting from this solicitation or request for quote (including, but not limited to, the performance of services and the provision of equipment, parts, commodities or other goods sold); and
2. A Bid may not be considered for award nor shall any award be made to a Bidder who has not submitted the certification below; and
3. Where the Bid is submitted by a corporate Bidder, such certification shall be deemed to have been authorized by the Bidder and such authorization shall be deemed to include the signing and submission of such Bid; and
4. The successful Bidder's failure to adhere to the Cybersecurity Requirements during the Term of the Contract shall be considered an event of default pursuant to the Contract Terms and Conditions.

**REQUIRED BIDDER/PROPOSER CERTIFICATION OF COMPLIANCE WITH THE CYBERSECURITY REQUIREMENTS**

By submission of this Bid, 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 the Bidder has read, understood and shall comply with all such Cybersecurity Requirements.

**By signing below, Bidder certifies that the statements made above are complete, true, and accurate.**

MTA Inquiry No.:

Bidder Name:

Bidder Signature:

Date:

Print name of signatory:

Print title of signatory: