

**CENTRAL NEW YORK  
REGIONAL TRANSPORTATION AUTHORITY**

**DISADVANTAGED BUSINESS ENTERPRISE  
PROGRAM**

**Revised – September 2020**

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## **I. INTRODUCTION**

The Central New York Regional Transportation Authority (“CNYRTA”) is authorized by N.Y. Public Authorities Law §1325 et seq. The CNYRTA is the recipient of federal transit funds authorized by Titles I, III, V, and VI of ISTEA, Pub. L. 102-240 or by Federal transit laws in Title 49, U.S. Code, or Titles I, II, and V of the Teas-21, Pub. L. 105-178. The transportation district and present service area of CNYRTA consists of Onondaga, Cayuga, Oswego and Oneida counties. Three other counties (Cortland, Jefferson, Madison) may join the district by vote of their county legislatures.

CNYRTA provides its services through operating subsidiary corporations which include:

- < CNY Centro, Inc.
- < Centro of Cayuga
- < Centro of Oswego
- < Centro of Oneida
- < Call-A-Bus, Inc.
- < Centro Parking
- < ITC, Inc.

This Disadvantaged Business Enterprise program implements the Intermodal Surface Transportation Efficiency Act of 1991 (“ISTEA”), Pub. L. 102-240, 105 Stat. 1914; the Transportation Equity Act for the 21st Century (“TEA-21”), Pub. L. 105-178, 112 Stat. 107; and Part 26 of the regulations of the United States Department of Transportation.

CNYRTA reserves the right to amend this Program from time to time in its discretion, or as required to comply with changes in applicable statutes, regulations or guidelines.

## **II. DEFINITIONS**

The terms used in this program have the meanings defined in 49 CFR 26.5, unless otherwise specified.

Affiliation has the same meaning the term has in the Small Business Administration (SBA) regulations, 13 CFR part 121.

(1) Except as otherwise provided in 13 CFR part 121, concerns are affiliates of each other when, either directly or indirectly:

- (i) One concern controls or has the power to control the other; or
- (ii) A third party or parties controls or has the power to control both; or
- (iii) An identity of interest between or among parties exists such that affiliation may be found.

(2) In determining whether affiliation exists, it is necessary to consider all appropriate factors, including common ownership, common management, and contractual relationships. Affiliates must be considered together in determining whether a concern meets small business size criteria and the statutory cap on the participation of firms in the DBE program.

Alaska Native means a citizen of the United States who is a person of one-fourth degree or more Alaskan Indian (including Tsimshian Indians not enrolled in the Metlaktla Indian Community), Eskimo, or Aleut blood, or a combination of those bloodlines. The term includes, in the absence of proof of a minimum blood quantum, any citizen whom a Native village or Native group regards as an Alaska Native if their father or mother is regarded as an Alaska Native.

Alaska Native Corporation (ANC) means any Regional Corporation, Village Corporation, Urban Corporation, or Group Corporation organized under the laws of the State of Alaska in accordance with the Alaska Native Claims Settlement Act, as amended (43 U.S.C. 1601, et seq.).

“Compliance” means that a recipient has correctly implemented the requirements of this part.

Contract means a legally binding relationship obligating a seller to furnish supplies or services (including, but not limited to, construction and professional services) and the buyer to pay for them.

Contractor means one who participates, through a contract or subcontract (at any tier), in a DOT-assisted highway, transit, or airport program.

Department or DOT means the U.S. Department of Transportation, including the Office of the Secretary, the Federal Highway Administration (FHWA), the Federal Transit Administration (FTA), and the Federal Aviation Administration (FAA).

Disadvantaged business enterprise or DBE means a for-profit small business concern --

(1) That is at least 51 percent owned by one or more individuals who are both socially and economically disadvantaged or, in the case of a corporation, in which 51 percent of the stock is owned by one or more such individuals; and

(2) Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

DOT-assisted contract means any contract between a recipient and a contractor (at any tier) funded in whole or in part with DOT financial assistance, including letters of credit or loan guarantees, except a contract solely for the purchase of land.

Good faith efforts means efforts to achieve a DBE goal or other requirement of this part which, by their scope, intensity, and appropriateness to the objective, can reasonably be expected to fulfill the program requirement.

Immediate family member means father, mother, husband, wife, son, daughter, brother, sister, grandmother, grandfather, grandson, granddaughter, mother-in-law, or father-in-law.

Indian tribe means any Indian tribe, band, nation, or other organized group or community of Indians, including any ANC, which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians, or is recognized as such by the State in which the tribe, band, nation, group, or community resides. See definition of “tribally-owned concern” in this section.

Joint venture means an association of a DBE firm and one or more other firms to carry out a single, for-profit business enterprise, for which the parties combine their property, capital, efforts, skills and knowledge, and in which the DBE is responsible for a distinct, clearly defined portion of the work of the contract and whose share in the capital contribution, control, management, risks, and profits of the joint venture are commensurate with its ownership interest. Native Hawaiian means any individual whose ancestors were natives, prior to 1778, of the area which now comprises the State of Hawaii.

Native Hawaiian Organization means any community service organization serving Native Hawaiians in the State of Hawaii which is a not-for-profit organization chartered by the State of Hawaii, is controlled by Native Hawaiians, and whose business activities will principally benefit such Native Hawaiians.

Noncompliance means that a recipient has not correctly implemented the requirements of this part.

Operating Administration or OA means any of the following parts of DOT: the Federal Aviation Administration (FAA), Federal Highway Administration (FHWA), and Federal Transit Administration (FTA). The “Administrator” of an operating administration includes his or her designees.

Personal net worth means the net value of the assets of an individual remaining after total liabilities are deducted. An individual's personal net worth does not include: The individual's ownership interest in an applicant or participating DBE firm or the individual's equity in his or her

primary place of residence. An individual's personal net worth includes only his or her own share of assets held jointly or as community property with the individual's spouse.

Primary industry classification means the four digit Standard Industrial Classification (NAIC) code designation which best describes the primary business of a firm. The NAIC code designations are described in the Standard Industry Classification Manual . As the North American Industrial Classification System (NAICS) replaces the NAIC system, references to NAIC codes and the NAIC Manual are deemed to refer to the NAICS manual and applicable codes. The NAIC Manual and the NAICS Manual are available through the National Technical Information Service (NTIS) of the U. S. Department of Commerce (Springfield, VA, 22261). NTIS also makes materials available through its web site ([www.ntis.gov/naics](http://www.ntis.gov/naics)).

Primary recipient means a recipient which DOT financial assistance and passes some or all of it on to another recipient.

Principal place of business means the business location where the individuals who manage the firm's day-to-day operations spend most working hours and where top management's business records are kept. If the offices from which management is directed and where business records are kept are in different locations, the recipient will determine the principal place of business for DBE program purposes.

Program means any undertaking on a recipient's part to use DOT financial assistance, authorized by the laws to which this part applies.

Race-conscious measure or program is one that is focused specifically on assisting only DBEs, including women-owned DBEs.

Race-neutral measure or program is one that is, or can be, used to assist all small businesses. For the purposes of this part, race-neutral includes gender-neutrality.

Recipient is any entity, public or private, to which DOT financial assistance is extended, whether directly or through another recipient, through the programs of the FAA, FHWA, or FTA, or who has applied for such assistance.

Secretary means the Secretary of Transportation or his/her designee.

Set-aside means a contracting practice restricting eligibility for the competitive award of a contract solely to DBE firms.

Small Business Administration or SBA means the United States Small Business Administration.

Small business concern means, with respect to firms seeking to participate as DBEs in DOT-assisted contracts, a small business concern as defined pursuant to section 3 of the Small Business Act and Small Business Administration regulations implementing it (13 CFR part 121) that also does not exceed the cap on average annual gross receipts specified in 26.65(b).

Socially and economically disadvantaged individual means any individual who is a citizen (or lawfully admitted permanent resident) of the United States and who is --

(1) Any individual who a recipient finds to be a socially and economically disadvantaged individual on a case-by-case basis.

(2) Any individual in the following groups, members of which are rebuttably presumed to be socially and economically disadvantaged:

(i) "Black Americans," which includes persons having origins in any of the Black racial groups of Africa;

(ii) "Hispanic Americans," which includes persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;

(iii) "Native Americans," which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians;

(iv) "Asian-Pacific Americans," which includes persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific

Islands (Republic of Palau), the Commonwealth of the Northern Marianas Islands, Macao, Fiji, Tonga, Kiribati, Juvalu, Nauru, Federated States of Micronesia, or Hong Kong;

(v) “Subcontinent Asian Americans,” which includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka;

(vi) Women;

(vii) Any additional groups whose members are designated as socially and economically disadvantaged by the SBA, at such time as the SBA designation becomes effective.

Tribally-owned concern means any concern at least 51 percent owned by an Indian tribe as defined in this section.

You refers to a recipient, unless a statement in the text of this part or the context requires otherwise (i.e., 'You must do XYZ' means that recipients must do XYZ).

CNYRTA means the Central New York Regional Transportation Authority and/or the applicable operating subsidiary corporation(s).

We or us means the Central New York Regional Transportation Authority and/or the applicable operating subsidiary corporation(s), unless the context requires otherwise.

### **III. OBJECTIVES AND POLICY STATEMENT**

The Central New York Regional Transit Authority (“CNYRTA”) has established a Disadvantaged Business Enterprise (“DBE”) program in accordance with regulations of the U.S. Department of Transportation (“DOT”), 49 CFR Part 26. CNYRTA has received Federal financial assistance from the Department of Transportation, and as a condition of receiving this assistance, CNYRTA has signed an assurance that it will comply with 49 CFR Part 26. It is the policy of CNYRTA to ensure that DBEs, as defined in Part 26, have an equal opportunity to receive and participate in DOT-assisted contracts. It is also our policy -

To ensure nondiscrimination in the award and administration of DOT assisted contracts;

To create a level playing field on which DBEs can compete fairly for DOT assisted contracts;

To ensure that the DBE Program is narrowly tailored in accordance with applicable law;

To ensure that only firms that fully meet 49 CFR Part 26 eligibility standards are permitted to participate as DBEs;

To help remove barriers to the participation of DBEs in DOT assisted contracts; and

To assist the development of firms that can compete successfully in the market place outside the DBE Program.

The Vice President of Finance has been delegated as the DBE Liaison Officer. The DBE Liaison Officer is responsible for implementing all aspects of the DBE program. Implementation of the DBE program is accorded the same priority as compliance with all other legal obligations incurred by CNYRTA in its financial assistance agreements with the Department of Transportation.

CNYRTA has disseminated this policy statement to the Board of Directors and all of the components of our organization. We have distributed this statement to DBE and non-DBE business communities that perform work for us on DOT-assisted contracts.

See copy of policy statement attached as Appendix “1”.

#### **IV. NONDISCRIMINATION**

CNYRTA will never exclude any person from participation in, deny any person the benefits of, or otherwise discriminate against anyone in connection with the award and performance of any contract covered by 49 CFR Part 26 on the basis of race, color, sex, or national origin.

In administering its DBE program, CNYRTA will not, directly or through contractual or other arrangements, use criteria or methods of administration that have the effect of defeating or substantially impairing accomplishment of the objectives of the DBE program with respect to individuals of a particular race, color, sex, or national origin.

#### **V. DBE PROGRAM UPDATES**

We will continue to carry out this program until all funds from DOT financial assistance have been expended. We will provide to DOT updates representing significant changes in the program.

#### **VI. QUOTAS**

We do not use quotas in any way in the administration of this DBE program.

#### **VII. DBE LIAISON OFFICER**

We have designated the following individual as our DBE Liaison Officer (“DBELO”):

Linda Biata  
Vice President of Finance  
Central New York Regional Transportation Authority  
200 Cortland Avenue  
P.O. Box 820  
Syracuse, NY 13205-0820  
(315) 442-3364

The DBELO is responsible for implementing all aspects of the DBE program and ensuring that CNYRTA complies with all provisions of 49 CFR Part 26. DBELO has direct, independent access to the Chief Executive Officer of CNYRTA concerning DBE program matters. The DBELO is responsible for developing, implementing and monitoring the DBE program, in coordination with other appropriate officials. Duties and responsibilities include the following.

Gathers and reports statistical data and other information as required by DOT.

Reviews third party contracts and purchase requisitions for compliance with this program.

Works with all departments to set overall annual goals.

Ensures that bid notices and requests for proposals are available to DBEs in a timely manner.

Identifies contracts and procurements so that DBE goals are included in solicitations (both race-neutral methods and contract specific goals) and monitors results.



Analyzes CNYRTA's progress toward goal attainment and identifies ways to improve progress.

Participates in pre-bid meetings.

Advises the Chief Executive Officer and Board of Directors on DBE matters and achievement.

Participates with the legal counsel and project manager to determine contractor compliance with good faith efforts.

Provides DBEs with information and assistance in preparing bids, obtaining bonding and insurance.

Plans and participates in DBE training seminars.

Provides outreach to DBEs and community organizations to advise them of opportunities.

Maintains CNYRTA's updated directory on certified DBEs.

Other staff work with the DBELO in implementing this DBE program. The VP of Business Development & Corporate Communications is involved in facilitating the outreach program to inform potential DBEs of potential contracting opportunities.

## **VIII. FEDERAL FINANCIAL ASSISTANCE AGREEMENT ASSURANCE**

CNYRTA has signed the following assurance, applicable to all DOT-assisted contracts and their administration. This language will appear in financial assistance agreements with any subrecipients.

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

## **IX. DBE FINANCIAL INSTITUTIONS**

It is the policy of CNYRTA to investigate the full extent of services offered by financial institutions owned and controlled by socially and economically disadvantaged individuals in the community, to make reasonable efforts to use these institutions, and to encourage prime contractors on DOT-assisted contracts to make use of these institutions.

At present, CNYRTA is unaware of any such institutions in its community. CNYRTA has reviewed the list of minority owned banks maintained by the Federal Reserve System before reaching this conclusion. CNYRTA encourages the use of the services of financial institutions owned and controlled by disadvantaged persons, when such institutions are available.

## **X. DBE DIRECTORY**

CNYRTA utilizes the State of New York Unified Certification Program Business Directory. This application is a search engine for the combined business directories of the New York Department of Transportation, Metropolitan Transportation Authority, Niagara Frontier Transportation Authority and Port Authority of New York New Jersey. Firms certified as Federal Disadvantaged Business Enterprises (DBEs) by one of these agencies are now automatically certified with all four. The directory is located on line at <https://nysucp.newnycontracts.com/>.

## **XI. OVERCONCENTRATION**

CNYRTA has not identified overconcentration through its goal-setting process (see below) or through any other means permitted by 49 C.F.R. §26.33. If, in the future, CNYRTA determines that DBE firms are so overconcentrated in a certain type of work as to unduly burden the opportunity of non-DBE firms to participate in this type of work, CNYRTA will devise appropriate measures to address this overconcentration, in accordance with 49 C.F.R. §26.33.

## **XII. REQUIRED CONTRACT CLAUSES**

### **Contract Assurance**

We will ensure that the following clause is placed in every DOT-assisted contract and subcontract:

The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate.

### **Prompt Payment**

We will include the following clause in each DOT-assisted prime contract:

The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than thirty (30) days from the receipt of each payment the prime contractor receives from CNYRTA. The prime contractor agrees further to return retainage payments to each subcontractor within thirty (30) days after the contractor's work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of CNYRTA. This clause applies to both DBE and non-DBE subcontractors.

If a contractor fails to comply with the prompt payment clause, it may be subject to remedies including withholding of further payments from CNYRTA and/or termination of the contract.

### **XIII. MONITORING AND ENFORCEMENT MECHANISMS**

We will bring to the attention of the FTA Office of Civil Rights any false, fraudulent, or dishonest conduct in connection with the program, so that the Regional Civil Rights Officer can take the steps (e.g., referral to the Department of Justice for criminal prosecution, referral to the DOT Inspector General, action under suspension and debarment or Program Fraud and Civil Penalties rules) provided in 26.107. We also will consider similar action under our own legal authorities, including responsibility determinations in future contracts.

In the events of non-compliance with the DBE regulation by a participant in our procurement, it may be subject to remedies including withholding of further payments from CNYRTA and/or termination of the contract.

We will implement appropriate mechanisms to ensure compliance with the part's requirements by all program participants (e.g., applying legal and contract remedies available under Federal, state and local law).

We will verify that the work committed to DBEs at contract award is actually performed by the DBEs. CNYRTA will maintain a running tally of actual DBE attainments (e.g., payments actually made to DBE firms) and ensure that DBE participation is credited toward overall or contract goals only when payments are actually made to DBE firms.

CNYRTA requires its prime contractors to make good faith efforts to replace a DBE subcontractor that is unable to perform successfully with another DBE. CNYRTA approves all substitutions of subcontractors, in order to ensure that the substitute firms are eligible DBEs.

Any DBE subcontracting programs or documentation required by CNYRTA shall be submitted to CNYRTA by the apparent successful bidder/ proposer. Failure to submit such materials shall make the bidder/proposer ineligible for award.

CNYRTA shall advise each subrecipient, contractor, or subcontractor that failure to carry out the requirements set forth in the required contract provisions shall constitute a breach of contract and may result in termination of the agreement or contract by CNYRTA or such remedy as CNYRTA deems appropriate.

Requests for proposals issued by CNYRTA include notification to all proposing contractors that DBEs will be given the full opportunity to submit proposals and that CNYRTA will not discriminate on the grounds of sex, race, color, or national origin, in consideration for an award. The instructions to proposed contractors state that all proposing contractors must be in compliance with the requirements with regard to the participation of DBEs.

CNYRTA will maintain records and reports which are necessary to monitor compliance.

### **XIV. OVERALL GOALS**

#### **Method**

The following is a summary of the method used to calculate the goal:

We use the NYS UCP Directory and Census Bureau data to calculate the relative availability of DBEs (“base figure”) for “Step 1” of the process (see 49 CFR 26.45(c)). We determine the number of ready, willing and able DBEs in our market from the NYS UCP Directory. Using the Census Bureau’s County Business Pattern (CBP) database, we determine the number of all ready, willing and able businesses available in our market that perform work in the same North American Industry Classification System (NAICS) codes. The base figure is a percentage figure calculated by first determining the percentage of the budget each project holds. This percentage is then multiplied by the number of available DBEs divided by the number of all available firms for each respective project. The percentages calculated for each project are then added together and divided by the number of total projects to derive a base figure for the relative availability of DBEs in our market.

“Step 2” of the process (see 49 CFR 26.45(d)) is intended to adjust the “base figure” percentage from Step 1 so that it reflects as accurately as possible the DBE participation the recipient would expect in the absence of discrimination. In Step 2, we take into consideration the current capacity of DBEs to perform work in our DOT-assisted contracting program, as measured by the volume of work DBEs have performed in recent years. If applicable, we also consider any available disparity study and/or information about barriers to entry or competitiveness of DBEs in our programs.

We are not aware of any applicable disparity studies or other information about barriers to entry or competitiveness of DBEs in our programs.

CNYRTA reserves the right to select a different methodology, as long as it is authorized by 49 CFR 26.45 and properly reported.

### **Method as Applied to Overall Goal**

The calculation of the goal is subject to revision to take into account any necessary verification and correction of the data, any comments received, etc.

#### ***Step 1 – Develop a Base Figure***

***Base Figure - % of overall budget- Project 1(DBE/All Firms) + % of overall budget- P 2(DBE/All Firms)..etc***

The number of DBEs in the area that perform work in the applicable NAICS codes, based on the NYS UCP Directory.

The number of available businesses in the area that perform work in these NAICS codes, based on the Census Bureau’s County Business Patterns (CBP) database for New York.

The number of DBEs divided by the number of all businesses for each project is then multiplied by the percentage of the overall budget for each project, respectively. The percentages that result are added together and divided by the total number of projects to determine the base figure for the relative availability of DBEs in our market.

#### ***Step 2 – Adjust Base Figure***

In Step 2, the base figure determined under Step 1 above is adjusted to take into consideration the current capacity of DBEs to perform work in our contracting program, as measured by the actual volume of work that DBEs have performed in recent years. CNYRTA is completing this adjustment by usage of the historical median from past FFY participation percentages. This adjustment is authorized by 49 CFR 26.45.

## **Transit Vehicle Manufacturers**

CNYRTA requires each transit vehicle manufacturer, as a condition of being authorized to bid or propose on FTA-assisted transit vehicle procurements, to certify that it has complied with the requirements of this section. Alternatively, CNYRTA may, at its discretion and with FTA approval, establish project-specific goals for DBE participation in the procurement of transit vehicles in lieu of the transit vehicle manufacturer complying with this element of the program.

### **Process**

CNYRTA will submit its overall goal to DOT on or about August 1 on a 3 year triennial cycle. Revisions to the overall goal, and project goals, may be submitted at other times.

Before establishing the overall goal, CNYRTA provides for public participation. This includes consultation with interested persons or groups to obtain information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and CNYRTA's efforts to establish a level playing field for the participation of DBEs. The consultation includes, but is not necessarily limited to, minority, women's and general contractor groups, community organizations, and other officials or organizations.

Following this consultation, we publish a notice of the proposed overall goal, informing the public that the proposed goal and its rationale are available for inspection during normal business hours at our principal office for 30 days following the date of the notice, and informing the public that we and DOT will accept comments on the goals for 45 days from the date of the notice. This notice will be published in general circulation newspapers, available minority-focus media, and trade publications. Normally, we will issue this notice by June 1. The notice will include addresses to which comments may be sent and where the proposal may be reviewed.

Our overall goal submission to DOT will include a summary of information and comments received during this public participation process and our responses. We will begin using our overall goal on October 1 of each year, unless we have received other instructions from DOT (or, if the goal is established on a project basis, by the time of the first solicitation for a DOT-assisted contract for the project).

### **Breakout of Estimated Race-Neutral and Race-Conscious Participation**

CNYRTA will meet the maximum feasible portion of its overall goal by using race-neutral means of facilitating DBE participation. CNYRTA uses race-neutral means to increase DBE participation in accordance with 49 C.F.R. §26.51, including:

- (1) Encouraging prime contractors to subcontract work;
- (2) Providing technical assistance and other services;
- (3) Carrying out information and communications programs on contracting procedures and specific contract opportunities (e.g., ensuring the inclusion of DBEs, and other small businesses, on recipient mailing lists for bidders; ensuring the dissemination to bidders on prime contracts of lists of potential subcontractors);
- (4) Making our DBE directory available for distribution to potential prime contractors; and
- (5) Holding pre-bid conferences to inform potential bidders about contracting opportunities and CNYRTA's commitment to maximize utilization of DBEs.

Each construction project is advertised in local newspapers and the New York State Contract Reporter. The advertisement indicates that DBEs are welcome to respond. Businesses which are interested in competing for contracts generally know that projects are advertised in these publications.

We estimate that, in meeting our overall goal, we will obtain 100% of the goal from race-neutral participation. However, this is subject to adjustment after more information is available on major contracting opportunities, the availability of Federal funding, and the degree of success of race-neutral means.

We will adjust the estimated breakout of race-neutral and race-conscious participation as needed to reflect actual DBE participation and we will track and report race-neutral and race-conscious participation separately. For reporting purposes, race-neutral DBE participation includes, but is not necessarily limited to, the following: DBE participation through a prime contract a DBE obtains through customary competitive procurement procedures; DBE participation through a subcontract on a prime contract that does not carry a DBE goal; DBE participation on a prime contract exceeding a contract goal; and DBE participation through a subcontract from a prime contractor that did not consider a firm's DBE status in making the award.

## **XV. CONTRACT GOALS**

CNYRTA will use contract goals to meet any portion of the overall goal that CNYRTA does not project being able to meet using race-neutral means.

Contract goals are established so that, over the period to which the overall goal applies, they will cumulatively result in meeting any portion of our overall goal that is not projected to be met through the use of race-neutral means.

We will establish contract goals only on those DOT-assisted contracts that have subcontracting possibilities. We need not establish a contract goal on every such contract, and the size of contract goals will be adapted to the circumstances of each such contract (e.g., type and location of work, availability of DBEs to perform the particular type of work). Contract goals will provide for participation by all certified DBEs and will not be subdivided into group-specific goals.

We will express our contract goals as a percentage of the total amount of a DOT-assisted contract or the Federal share of a DOT-assisted contract.

To ensure that our DBE program continues to be narrowly tailored to overcome the effects of discrimination, we will adjust our use of contract goals as follows:

(1) If our approved projection estimates that we can meet our entire overall goal for a given year through race-neutral means, we will implement our program without setting contract goals during that year.

(2) If, during the course of any year in which we are using contract goals, we determine that we will exceed our overall goal, we will reduce or eliminate the use of contract goals to the extent necessary to ensure that the use of contract goals does not result in exceeding the overall goal. If we determine that we will fall short of our overall goal, then we will make appropriate modifications in our use of race-neutral and/or race-conscious measures to allow attainment of the overall goal.

(3) If the DBE participation which we have obtained by race-neutral means alone meets or exceeds our overall goals for two consecutive years, we not be required to make a projection of the

amount of our goal that we can meet using such means in the next year. We would not set contract goals on any contracts in the next year. We would continue using only race-neutral means to meet our overall goals unless and until we do not meet our overall goal for a year.

(4) If we obtain DBE participation that exceeds our overall goal in two consecutive years through the use of contract goals (i.e., not through the use of race-neutral means alone), we will reduce our use of contract goals proportionately in the following year.

In any year in which we project meeting part of our goal through race-neutral means and the remainder through contract goals, we will maintain data separately on DBE achievements in those contracts with and without contract goals, respectively. We will report this data to the concerned operating administration as provided in 26.11.

## **XVI. GOOD FAITH EFFORTS**

### **Information to be submitted**

CNYRTA treats bidder/offers' compliance with good faith efforts requirements as a matter of responsiveness.

Each solicitation for which a contract goal has been established will require the bidders/offers to submit the following information with their bids or proposals:

The names and addresses of DBE firms that will participate in the contract;

A description of the work that each DBE will perform;

The dollar amount of the participation of each DBE firm participation;

Written and signed documentation of commitment to use a DBE subcontractor whose participation it submits to meet a contract goal;

Written and signed confirmation from the DBE that it is participating in the contract as provided in the prime contractor's commitment; and

If the contract goal is not met, evidence of good faith efforts.

### **Demonstration of good faith efforts**

The obligation of the bidder/offers is to make good faith efforts. The bidder/offers can demonstrate that it has done so either by meeting the contract goal or documenting good faith efforts. Examples of good faith efforts are found in Appendix A to Part 26 (attached as Appendix 2 to this DBE Program).

Appropriate personnel, such as the DBELO, Purchasing Manager and/or Transportation Analyst, are responsible for determining whether a bidder/offers who has not met the contract goal has documented sufficient good faith efforts to be regarded as responsible.

We will ensure that all information is complete and accurate and adequately documents the bidder/offers' good faith efforts before we commit to the performance of the contract by the bidder/offers.

## **Administrative reconsideration**

Within five (5) business days of being informed by CNYRTA that it is not responsible because it has not documented sufficient good faith efforts, a bidder/offeror may request administrative reconsideration by the Chief Executive Officer or his/her designee. Bidders/offerors should make this request in writing to the following reconsideration official:

Brian Schultz  
Chief Executive Officer  
Central New York Regional Transportation Authority  
200 Cortland Avenue  
P.O. Box 820  
Syracuse, NY 13205-0820  
(315) 442-3313

The reconsideration official will not have played any role in the original determination that the bidder/offeror did not make or document sufficient good faith efforts.

As part of this reconsideration, the bidder/offeror will have the opportunity to provide written documentation or argument concerning the issue of whether it met the goal or made adequate good faith efforts to do so. The bidder/offeror will have the opportunity to meet in person with our reconsideration official to discuss the issue of whether it met the goal or made adequate good faith efforts to do so. We will send the bidder/offeror a written decision on reconsideration, explaining the basis for finding that the bidder did or did not meet the goal or make adequate good faith efforts to do so. The result of the reconsideration process is not administratively appealable to the Department of Transportation.

## **Good Faith Efforts when a DBE is replaced on a contract**

A prime contractor may not terminate for convenience a DBE subcontractor (or an approved substitute DBE firm), and then perform the work of the terminated subcontractor with its own forces of those of an affiliate, without our prior written consent.

We will require a contractor to make good faith efforts to replace a DBE that is terminated or has otherwise failed to complete its work on a contract with another certified DBE, to the extent needed to meet the contract goal. We will require the prime contractor to notify the DBE Liaison Officer immediately of the DBE's inability or unwillingness to perform and provide reasonable documentation.

In this situation, we will require the prime contractor to obtain our prior approval of the substitute DBE and to provide copies of new or amended subcontracts, or documentation of good faith efforts. If the contractor fails or refuses to comply in the time specified, our contracting office may issue an order stopping all or part of payment/work until satisfactory action has been taken. If the contractor still fails to comply, the contracting officer may issue a termination for default proceeding, to the extent permitted by the contract.

## **XVII. COUNTING DBE PARTICIPATION**

We will count DBE participation toward overall and contract goals as provided in 49 CFR 26.55, as follows:



(a) When a DBE participates in a contract, we count only the value of the work actually performed by the DBE toward DBE goals.

(1) Count the entire amount of that portion of a construction contract (or other contract not covered by paragraph (a)(2) of this section) that is performed by the DBE's own forces. Include the cost of supplies and materials obtained by the DBE for the work of the contract, including supplies purchased or equipment leased by the DBE (except supplies and equipment the DBE subcontractor purchases or leases from the prime contractor or its affiliate).

(2) Count the entire amount of fees or commissions charged by a DBE firm for providing a bona fide service, such as professional, technical, consultant, or managerial services, or for providing bonds or insurance specifically required for the performance of a DOT-assisted contract, toward DBE goals, provided you determine the fee to be reasonable and not excessive as compared with fees customarily allowed for similar services.

(3) When a DBE subcontracts part of the work of its contract to another firm, the value of the subcontracted work may be counted toward DBE goals only if the DBE's subcontractor is itself a DBE. Work that a DBE subcontracts to a non-DBE firm does not count toward DBE goals.

(b) When a DBE performs as a participant in a joint venture, count a portion of the total dollar value of the contract equal to the distinct, clearly defined portion of the work of the contract that the DBE performs with its own forces toward DBE goals.

(c) Count expenditures to a DBE contractor toward DBE goals only if the DBE is performing a commercially useful function on that contract.

(1) A DBE performs a commercially useful function when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, the DBE must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself. To determine whether a DBE is performing a commercially useful function, you must evaluate the amount of work subcontracted, industry practices, whether the amount the firm is to be paid under the contract is commensurate with the work it is actually performing and the DBE credit claimed for its performance of the work, and other relevant factors.

(2) A DBE does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of DBE participation. In determining whether a DBE is such an extra participant, you must examine similar transactions, particularly those in which DBEs do not participate.

(3) If a DBE does not perform or exercise responsibility for at least 30 percent of the total cost of its contract with its own work force, or the DBE subcontracts a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work involved, you must presume that it is not performing a commercially useful function.

(4) When a DBE is presumed not to be performing a commercially useful function as provided in paragraph (c)(3) of this section, the DBE may present evidence to rebut this presumption. You may determine that the firm is performing a commercially useful function given the type of work involved and normal industry practices.

(5) Your decisions on commercially useful function matters are subject to review by the concerned operating administration, but are not administratively appealable to DOT.

(d) Use the following factors in determining whether a DBE trucking company is performing a commercially useful function:

(1) The DBE must be responsible for the management and supervision of the entire trucking operation for which it is responsible on a particular contract, and there cannot be a contrived arrangement for the purpose of meeting DBE goals.

(2) The DBE must itself own and operate at least one fully licensed, insured, and operational truck used on the contract.

(3) The DBE receives credit for the total value of the transportation services it provides on the contract using trucks it owns, insures, and operates using drivers it employs.

(4) The DBE may lease trucks from another DBE firm, including an owner-operator who is certified as a DBE. The DBE who leases trucks from another DBE receives credit for the total value of the transportation services the lessee DBE provides on the contract.

(5) The DBE may also lease trucks from a non-DBE firm, including an owner-operator. The DBE who leases trucks from a non-DBE is entitled to credit only for the fee or commission it receives as a result of the lease arrangement. The DBE does not receive credit for the total value of the transportation services provided by the lessee, since these services are not provided by a DBE.

(6) For purposes of this paragraph (d), a lease must indicate that the DBE has exclusive use of and control over the truck. This does not preclude the leased truck from working for others during the term of the lease with the consent of the DBE, so long as the lease gives the DBE absolute priority for use of the leased truck. Leased trucks must display the name and identification number of the DBE.

(e) Count expenditures with DBEs for materials or supplies toward DBE goals as provided in the following:

(1) (i) If the materials or supplies are obtained from a DBE manufacturer, count 100 percent of the cost of the materials or supplies toward DBE goals.

(ii) For purposes of this paragraph (e)(1), a manufacturer is a firm that operates or maintains a factory or establishment that produces, on the premises, the materials, supplies, articles, or equipment required under the contract and of the general character described by the specifications.

(2) (i) If the materials or supplies are purchased from a DBE regular dealer, count 60 percent of the cost of the materials or supplies toward DBE goals.

(ii) For purposes of this section, a regular dealer is a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business.

(A) To be a regular dealer, the firm must be an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question.

(B) A person may be a regular dealer in such bulk items as petroleum products, steel, cement, gravel, stone, or asphalt without owning, operating, or maintaining a place of business as provided in this paragraph (e)(2)(ii) if the person both owns and operates distribution equipment for the products. Any supplementing of regular dealers' own distribution equipment shall be by a long-term lease agreement and not on an ad hoc or contract-by-contract basis.

(C) Packagers, brokers, manufacturers' representatives, or other persons who arrange or expedite transactions are not regular dealers within the meaning of this paragraph (e)(2).

(3) With respect to materials or supplies purchased from a DBE which is neither a manufacturer nor a regular dealer, count the entire amount of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees or transportation charges for the delivery of materials or supplies required on a job site, toward DBE goals, provided you determine the fees to be reasonable and not excessive as compared with fees customarily allowed for similar services. Do not count any portion of the cost of the materials and supplies themselves toward DBE goals, however.

(f) If a firm is not currently certified as a DBE in accordance with the standards of subpart D of this part at the time of the execution of the contract, do not count the firm's participation toward any DBE goals, except as provided for in 26.87(i).

(g) Do not count the dollar value of work performed under a contract with a firm after it has ceased to be certified toward your overall goal.

(h) Do not count the participation of a DBE subcontractor toward the prime contractor's DBE achievements or your overall goal until the amount being counted toward the goal has been paid to the DBE.

## **XVIII. CERTIFICATION**

CNYRTA is the member of a Unified Certification Program (UCP) administered by New York State. The UCP will meet all of the requirements of this section. CNYRTA will use and count for DBE credit only those DBE firms certified by the NYSUCP. They are:

- The Metropolitan Transportation Authority
- The Port Authority of New York and New Jersey
- The Niagara Frontier Transportation Authority
- The New York State Department of Transportation

## **XIX. UNIFIED CERTIFICATION PROGRAM**

The Disadvantaged Business Enterprise (DBE) regulation that took effect March 4, 1999 (Title 49 Part 26.81 of the Code of Federal Regulations) required that each state have a "one-stop shopping" certification process. This means that a firm would apply to only one agency for DBE certification, and that agency's decision would be honored by all other DBE certifying agencies (see below) and all entities within the state that receive funds from the United States Department of Transportation. The NYSUCP began to operate November 30, 2005. On May 19, 2004 CNYRTA executed and delivered an agreement to participate with the NYSUCP.

There are four agencies in New York State that administer a DBE certification program. They are:

### **The Metropolitan Transportation Authority**

Office of Civil Rights  
2 Broadway, 16th Floor  
New York, NY 10004-9256  
Telephone: (646) 252-1378  
Fax: (646) 252-1350  
[cgreene@mtahq.org](mailto:cgreene@mtahq.org)

### **The Port Authority of New York and New Jersey**

Small Business Programs  
New York, NY 10003  
Telephone: (212) 435-7817  
Fax: (212) 435-7828

### **Niagara Frontier Transportation Authority**

Equal Employment Opportunity/Diversity Development Department  
181 Ellicott Street  
Buffalo, NY 14203  
Telephone: (716) 855-7489  
Fax: (716) 855-7657  
[linda\\_seay@nfta.com](mailto:linda_seay@nfta.com)

The New York State Department of Transportation

Contract Audit Bureau  
DBE Certification  
50 Wolf Road, 6th Floor  
Albany, NY 12232  
Telephone: (518) 457-3180  
Fax: (518) 457-1675  
[jejones@dot.state.ny.us](mailto:jejones@dot.state.ny.us)

**XX. REMOVAL OF A DBE'S CERTIFICATION**

CNYRTA will not remove DBE certification, however in the event that an ineligibility complaint is received by the CNYRTA we will inform the Certifying Agency and or the NYSUCP for further investigation to determine removal of certification.

**XXI. CERTIFICATION APPEALS**

Any firm or complainant may appeal a decision in a certification matter to DOT. Such appeals may be sent to:

U.S. Department of Transportation  
Office of Civil Rights  
Certification Appeals Branch  
1200 New Jersey Ave, S.E., West Building  
7<sup>th</sup> Floor  
Washington, DC 20590

If you want to file an appeal, you must send a letter to the Department within 90 days of the date of the final decision, containing information and arguments concerning why the decision should be reversed. The Department may accept an appeal filed later than 90 days after the date of the decision if the Department determines that there was good cause for the late filing of the appeal.

If you are an appellant who is a firm which has been denied certification, whose certification has been removed, whose owner is determined not to be a member of a designated disadvantaged group, or concerning whose owner the presumption of disadvantage has been rebutted, your letter must state the name and address of any other recipient which currently certifies the firm, which has rejected an application for certification from the firm or removed the firm's eligibility within one year prior to the date of the appeal, or before which an application for certification or a removal of eligibility is pending.

A firm has the option of making a certification appeal to DOT under 26.89 without first exhausting any other remedy.

We will promptly implement any DOT certification appeal decisions affecting the eligibility of DBEs for our DOT-assisted contracting

**XXII. RECERTIFICATIONS**

Recertifications will be conducted by the Certifying Agencies or the NYSUCP.

### **XXIII. “NO CHANGE” AFFIDAVITS AND NOTICES OF CHANGE**

We require all DBEs to inform us, in a written affidavit, of any change in its circumstances affecting its ability to meet size, disadvantaged status, ownership or control criteria of 49 CFR part 26 or of any material changes in the information provided with the DBE's application for certification. We also require all owners of all DBEs to submit, prior to contract award, a “no change” affidavit meeting the requirements of 26.83(j). The text of this affidavit is the following:

I swear (or affirm) that there have been no changes in the circumstances of [name of DBE firm] affecting its ability to meet the size, disadvantaged status, ownership, or control requirements of 49 CFR part 26. There have been no material changes in the information provided with [name of DBE]'s application for certification, except for any changes about which you have provided written notice to CNYRTA under 26.83(i). [Name of firm] meets Small Business Administration (SBA) criteria for being a small business concern and its average annual gross receipts (as defined by SBA rules) over the firm's previous three fiscal years do not exceed \$17,420,000.

We require DBEs to submit with this affidavit documentation of the firm's size and gross receipts.

We will notify all currently certified DBE firms of these obligations with in Bid or Proposal documents. This notification will inform DBEs that to submit the “no change” affidavit, their owners must swear or affirm that they meet all regulatory requirements of part 26, including personal net worth. Likewise, if a firm's owner knows or should know that he or she, or the firm, fails to meet a part 26 eligibility requirement (e.g., personal net worth), the obligation to submit a notice of change applies.

See Appendix 4:        Schedule A:    No Change Affidavit

### **XXIV. INFORMATION COLLECTION AND REPORTING**

#### **Bidders List**

CNYRTA will create a bidders list, consisting of information about all DBE and non-DBE firms that bid or quote on DOT-assisted contracts. The purpose of this requirement is to allow use of the bidders list approach to calculating overall goals. The bidders list will include the name, address, DBE/non-DBE status, age of the firm, and annual gross receipts of firms.

#### **Monitoring Payments to DBEs**

We will require prime contractors to maintain records and documents of payments to DBEs for three years following the performance of the contract. These records will be made available for inspection upon request by any authorized representative of CNYRTA or DOT. This reporting requirement also extends to any certified DBE subcontractor.

We will keep a running tally of actual payments to DBE firms for work committed to them at the time of contract award. We will perform interim audits of contract payments to DBEs. The audit will review payments to DBE subcontractors to ensure that the actual amount paid to DBE subcontractors equals or exceeds the dollar amounts stated in the schedule of DBE participation.

## **Reporting to DOT**

We will report DBE participation to DOT on a bi –annual basis. These reports will reflect contracts awarded and payments actually made to DBEs on DOT assisted contracts.

If DOT requires reporting on a different form or in a different manner, we will comply with DOT's instructions.

## **Confidentiality**

We will safeguard from disclosure to third parties information that may reasonably be regarded as confidential business information, consistent with Federal, state, and local law (e.g., the N.Y. Freedom of Information Law). Notwithstanding any contrary provisions of state or local law, we will not release personal financial information submitted in response to the personal net worth requirement to a third party (other than DOT) without the written consent of the submitter.

The identity of complainants shall be kept confidential, at their election. If such confidentiality will hinder the investigation, proceeding or hearing, or result in a denial of appropriate administrative due process to other parties, the complainant will be advised for the purpose of waiving the privilege. Complainants are advised that, in some circumstances, failure to waive the privilege may result in the closure of the investigation or dismissal of the proceeding or hearing.

## **XXV. INTIMIDATION AND RETALIATION**

All contractors and other participants in this DBE Program must not intimidate, threaten, coerce, or discriminate against any individual or firm for the purpose of interfering with any right or privilege secured by Part 26 or because the individual or firm has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under Part 26. If you violate this prohibition, you are in noncompliance with Part 26.

## **XXVI. SMALL BUSINESS ELEMENT**

### **Small Business (as defined by SBA)**

SBA defines a U.S. small business as a concern that:

- Is organized for profit;
- Has a place of business in the US;
- Operates primarily within the U.S. or makes a significant contribution to the U.S. economy through payment of taxes or use of American products, materials or labor;
- Is independently owned and operated; and
- Is not dominant in its field on a national basis.

The business may be a sole proprietorship, partnership, corporation, or any other legal form. In determining what constitutes a small business, the definition will vary to reflect industry differences, such as size standards.

## Size Standards

SBA has established size standards for all for-profit economic activities as they are described under the North American Industry Classification System (NAICS) Identifying Industry Codes. Size standards are critical in the government-contracting process because they ensure a “level playing field” for competition among small businesses of varying sizes. CNYRTA will adopt the SBA size standards.

CNYRTA small business element which will be **without** social disadvantage will include the following initiatives:

- We will propose a race neutral small business set aside for prime contracts each year. Dollar amount will be depended on availability of funding.
- We will annually review the number of prime contracts available for small businesses. This will be accomplished through the annual review of all contracts.
- We will evaluate the ability to unbundle contracts that may preclude small business participation.
- We will work with prime contractors to identify opportunities where sub contracts are appropriate for small business consideration.
- We will look at potential joint venture opportunity.

## APPENDIX 1

### **POLICY STATEMENT ON CONTRACTS WITH DISADVANTAGED BUSINESS ENTERPRISES**

The Central New York Regional Transit Authority (“CNYRTA”) has established a Disadvantaged Business Enterprise (“DBE”) program in accordance with regulations of the U.S. Department of Transportation (“DOT”), 49 CFR Part 26. CNYRTA has received Federal financial assistance from the Department of Transportation, and as a condition of receiving this assistance, CNYRTA has signed an assurance that it will comply with 49 CFR Part 26. It is the policy of CNYRTA to ensure that DBEs, as defined in Part 26, have an equal opportunity to receive and participate in DOT-assisted contracts. It is also our policy -

To ensure nondiscrimination in the award and administration of DOT assisted contracts;

To create a level playing field on which DBEs can compete fairly for DOT assisted contracts;

To ensure that the DBE Program is narrowly tailored in accordance with applicable law;

To ensure that only firms that fully meet 49 CFR Part 26 eligibility standards are permitted to participate as DBEs;

To help remove barriers to the participation of DBEs in DOT assisted contracts; and

To assist the development of firms that can compete successfully in the market place outside the DBE Program.

The Vice President of Finance has been delegated as the DBE Liaison Officer. The DBE Liaison Officer is responsible for implementing all aspects of the DBE program. Implementation of the DBE program is accorded the same priority as compliance with all other legal obligations incurred by CNYRTA in its financial assistance agreements with the Department of Transportation.

CNYRTA will never exclude any person from participation in, deny any person the benefits of, or otherwise discriminate against anyone in connection with the award and performance of any contract covered by 49 CFR Part 26 on the basis of race, color, sex, or national origin.

In administering its DBE program, CNYRTA will not, directly or through contractual or other arrangements, use criteria or methods of administration that have the effect of defeating or substantially impairing accomplishment of the objectives of the DBE program with respect to individuals of a particular race, color, sex, or national origin.

Dated: 9/30/2020



Brian Schultz  
Chief Executive Officer



## **APPENDIX 2**

### **APPENDIX A TO PART 26 -- GUIDANCE CONCERNING GOOD FAITH EFFORTS**

I. When, as a recipient, you establish a contract goal on a DOT-assisted contract, a bidder must, in order to be responsible and/or responsive, make good faith efforts to meet the goal. The bidder can meet this requirement in either of two ways. First, the bidder can meet the goal, documenting commitments for participation by DBE firms sufficient for this purpose. Second, even if it doesn't meet the goal, the bidder can document adequate good faith efforts. This means that the bidder must show that it took all necessary and reasonable steps to achieve a DBE goal or other requirement of this part which, by their scope, intensity, and appropriateness to the objective, could reasonably be expected to obtain sufficient DBE participation, even if they were not fully successful.

II. In any situation in which you have established a contract goal, part 26 requires you to use the good faith efforts mechanism of this part. As a recipient, it is up to you to make a fair and reasonable judgment whether a bidder that did not meet the goal made adequate good faith efforts. It is important for you to consider the quality, quantity, and intensity of the different kinds of efforts that the bidder has made. The efforts employed by the bidder should be those that one could reasonably expect a bidder to take if the bidder were actively and aggressively trying to obtain DBE participation sufficient to meet the DBE contract goal. Mere pro forma efforts are not good faith efforts to meet the DBE contract requirements. We emphasize, however, that your determination concerning the sufficiency of the firm's good faith efforts is a judgment call: meeting quantitative formulas is not required.

III. The Department also strongly cautions you against requiring that a bidder meet a contract goal (i.e., obtain a specified amount of DBE participation) in order to be awarded a contract, even though the bidder makes an adequate good faith efforts showing. This rule specifically prohibits you from ignoring bona fide good faith efforts.

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

A. Soliciting through all reasonable and available means (e.g. attendance at pre-bid meetings, advertising and/or written notices) the interest of all certified DBEs who have the capability to perform the work of the contract. The bidder must solicit this interest within sufficient time to allow the DBEs to respond to the solicitation. The bidder must determine with certainty if the DBEs are interested by taking appropriate steps to follow up initial solicitations.

B. Selecting portions of the work to be performed by DBEs in order to increase the likelihood that the DBE goals will be achieved. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate DBE participation, even when the prime contractor might otherwise prefer to perform these work items with its own forces.

C. Providing interested DBEs with adequate information about the plans, specifications, and requirements of the contract in a timely manner to assist them in responding to a solicitation.

D. (1) Negotiating in good faith with interested DBEs. It is the bidder's responsibility to make a portion of the work available to DBE subcontractors and suppliers and to select those portions of the work or material needs consistent with the available DBE subcontractors and suppliers, so as to facilitate DBE participation. Evidence of such negotiation includes the names, addresses, and telephone numbers of DBEs that were considered; a description of the information provided regarding the plans and specifications for the work selected for subcontracting; and evidence as to why additional agreements could not be reached for DBEs to perform the work.

(2) A bidder using good business judgment would consider a number of factors in negotiating with subcontractors, including DBE subcontractors, and would take a firm's price and capabilities as well as contract goals into consideration. However, the fact that there may be some additional costs involved in finding and using DBEs is not in itself sufficient reason for a bidder's failure to meet the contract DBE goal, as long as such costs are reasonable. Also, the ability or desire of a prime contractor to perform the work of a contract with its own organization does not relieve the bidder of the responsibility to make good faith efforts. Prime contractors are not, however, required to accept higher quotes from DBEs if the price difference is excessive or unreasonable.

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

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

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

H. Effectively using the services of available minority/women community organizations; minority/women contractors' groups; local, state, and Federal minority/women business assistance offices; and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of DBEs.

V. In determining whether a bidder has made good faith efforts, you may take into account the performance of other bidders in meeting the contract. For example, when the apparent successful bidder fails to meet the contract goal, but others meet it, you may reasonably raise the question of whether, with additional reasonable efforts, the apparent successful bidder could have met the goal. If the apparent successful bidder fails to meet the goal, but meets or exceeds the average DBE participation obtained by other bidders, you may view this, in conjunction with other factors, as evidence of the apparent successful bidder having made good faith efforts.

## **APPENDIX 3**

### **APPENDIX E TO PART 26 - INDIVIDUAL DETERMINATIONS OF SOCIAL AND ECONOMIC DISADVANTAGE**

The following guidance is adapted, with minor modifications, from SBA regulations concerning social and economic disadvantage determinations (see 13 CFR 124.103(c) and 124.104).

#### **Social Disadvantage**

I. Socially disadvantaged individuals are those who have been subjected to racial or ethnic prejudice or cultural bias within American society because of their identities as members of groups and without regard to their individual qualities. Social disadvantage must stem from circumstances beyond their control. Evidence of individual social disadvantage must include the following elements:

(A) At least one objective distinguishing feature that has contributed to social disadvantage, such as race, ethnic origin, gender, disability, long-term residence in an environment isolated from the mainstream of American society, or other similar causes not common to individuals who are not socially disadvantaged;

(B) Personal experiences of substantial and chronic social disadvantage in American society, not in other countries; and

(C) Negative impact on entry into or advancement in the business world because of the disadvantage. Recipients will consider any relevant evidence in assessing this element. In every case, however, recipients will consider education, employment and business history, where applicable, to see if the totality of circumstances shows disadvantage in entering into or advancing in the business world.

(1) Education. Recipients will consider such factors as denial of equal access to institutions of higher education and vocational training, exclusion from social and professional association with students or teachers, denial of educational honors rightfully earned, and social patterns or pressures which discouraged the individual from pursuing a professional or business education.

(2) Employment. Recipients will consider such factors as unequal treatment in hiring, promotions and other aspects of professional advancement, pay and fringe benefits, and other terms and conditions of employment; retaliatory or discriminatory behavior by an employer or labor union; and social patterns or pressures which have channeled the individual into non-professional or non-business fields.

(3) Business history. The recipient will consider such factors as unequal access to credit or capital, acquisition of credit or capital under commercially unfavorable circumstances, unequal treatment in opportunities for government contracts or other work, unequal treatment by potential customers and business associates, and exclusion from business or professional organizations.

II. With respect to paragraph I.A) of this appendix, the Department notes that people with disabilities have disproportionately low incomes and high rates of unemployment. Many physical and attitudinal barriers remain to their full participation in education, employment, and business opportunities available to the general public. The Americans with Disabilities Act (ADA) was passed in recognition of the discrimination faced by people with disabilities. It is plausible that many individuals with disabilities - especially persons with severe disabilities (e.g., significant mobility, vision, or hearing impairments) - may be socially and economically disadvantaged.

III. Under the laws concerning social and economic disadvantage, people with disabilities are not a group presumed to be disadvantaged. Nevertheless, recipients should look carefully at individual showings of disadvantage by individuals with disabilities, making a case-by-case judgment about whether such an individual meets the criteria of this appendix. As public entities subject to Title II of the ADA, recipients must also ensure their DBE programs are accessible to individuals with disabilities. For example, physical barriers or the lack of application and information materials in accessible formats cannot be permitted to thwart the access of potential applicants to the certification process or other services made available to DBEs and applicants.

### **Economic Disadvantage**

(A) General. Economically disadvantaged individuals are socially disadvantaged individuals whose ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared to others in the same or similar line of business who are not socially disadvantaged.

(B) Submission of narrative and financial information.

(1) Each individual claiming economic disadvantage must describe the conditions which are the basis for the claim in a narrative statement, and must submit personal financial information.

(2) When married, an individual claiming economic disadvantage also must submit separate financial information for his or her spouse, unless the individual and the spouse are legally separated.

(C) Factors to be considered. In considering diminished capital and credit opportunities, recipients will examine factors relating to the personal financial condition of any individual claiming disadvantaged status, including personal income for the past two years (including bonuses and the value of company stock given in lieu of cash), personal net worth, and the fair market value of all assets, whether encumbered or not. Recipients will also consider the financial condition of the applicant compared to the financial profiles of small businesses in the same primary industry classification, or, if not available, in similar lines of business, which are not owned and controlled by socially and economically

disadvantaged individuals in evaluating the individual's access to credit and capital. The financial profiles that recipients will compare include total assets, net sales, pre-tax profit, sales/working capital ratio, and net worth.

(D) Transfers within two years.

(1) Except as set forth in paragraph (D)(2) of this appendix, recipients will attribute to an individual claiming disadvantaged status any assets which that individual has transferred to an immediate family member, or to a trust, a beneficiary of which is an immediate family member, for less than fair market value, within two years prior to a concern's application for participation in the DBE program, unless the individual claiming disadvantaged status can demonstrate that the transfer is to or on behalf of an immediate family member for that individual's education, medical expenses, or some other form of essential support.

(2) Recipients will not attribute to an individual claiming disadvantaged status any assets transferred by that individual to an immediate family member that are consistent with the customary recognition of special occasions, such as birthdays, graduations, anniversaries, and retirements.

(3) In determining an individual's access to capital and credit,

recipients may consider any assets that the individual transferred within such two-year period described by paragraph (D)(1) of this appendix that are not considered in evaluating the individual's assets and net worth (e.g., transfers to charities).

**APPENDIX 4**  
**SCHEDULE A**  
**NO CHANGE AFFIDAVIT**

I swear (or affirm) that there have been no changes in the circumstances of \_\_\_\_\_  
[name of DBE firm] affecting its ability to meet the size, disadvantaged status, ownership, or  
control requirements of 49 CFR part 26. There have been no material changes in the information  
provided with \_\_\_\_\_ [name of DBE]'s application for certification, except for  
any changes about which you have provided written notice to CNYRTA under  
26.83(i). \_\_\_\_\_ [Name of firm] meets Small Business Administration (SBA)  
criteria for being a small business concern and its average annual gross receipts (as defined by SBA  
rules) over the firm's previous three fiscal years do not exceed \$17,420,000.

1. Name of firm \_\_\_\_\_
2. Address of firm \_\_\_\_\_
3. Phone Number of firm \_\_\_\_\_
4. Name Certifying Agency \_\_\_\_\_
5. Years firm has been in business \_\_\_\_\_
6. What are the gross receipts of the firm for each of the last two years?  
Year ending \_\_\_\_\_ Year ending \_\_\_\_\_  
\$ \_\_\_\_\_ \$ \_\_\_\_\_

## AFFIDAVIT

“The undersigned swears that the foregoing statements are true and correct and include all material information necessary to identify and explain the operations of \_\_\_\_\_ (Name of Firm) \_\_\_\_\_ as well as the ownership thereof.

Further, the undersigned agrees to provide through the prime contractor or, if no prime, directly to the grantee current, complete and accurate information regarding actual work performed on the project, the payment therefor and any proposed changes, if any, of the foregoing arrangements and to permit the audit and examination of books, records and files of the named firm. Any material misrepresentation will be grounds for terminating any contract which may be awarded and for initiating action under Federal or State laws concerning false statements.”

Note: If, after filing this Schedule A and before the work of this firm is completed on the contract covered by this regulation, there is any significant change in the information submitted, you must inform the grantee of the change through the prime contractor or, if no prime contractor, inform the grantee directly.

Signature \_\_\_\_\_

Date \_\_\_\_\_

Title \_\_\_\_\_

Corporate Seal (where appropriate):

State of \_\_\_\_\_

County of \_\_\_\_\_

On this \_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, before me appeared \_\_\_\_\_, to me personally known, who, being duly sworn, did execute the foregoing affidavit, and did state that he or she was properly authorized by \_\_\_\_\_ to execute the affidavit and did so as his or her free act and deed.

[Seal]

Notary Public \_\_\_\_\_

Commission expires \_\_\_\_\_

**Appendix 5**  
**Forms 1 & 2 for Demonstration of Good Faith Efforts**

When contract goals are utilized to meet the overall goal, the following forms will be included in the solicitation package.

**FORM 1: DISADVANTAGED BUSINESS ENTERPRISE (DBE) UTILIZATION**

The undersigned bidder/offeror has satisfied the requirements of the bid specification in the following manner (please check the appropriate space):

\_\_\_\_\_ The bidder/offeror is committed to a minimum of \_\_\_\_\_ % DBE utilization on this contract.

\_\_\_\_\_ The bidder/offeror (if unable to meet the DBE goal of \_\_\_\_\_%) is committed to a minimum of \_\_\_\_\_% DBE utilization on this contract a submits documentation demonstrating good faith efforts.

Name of bidder/offeror's firm: \_\_\_\_\_

State Registration No. \_\_\_\_\_

By \_\_\_\_\_

(Signature) Title

**FORM 2: LETTER OF INTENT**

Name of bidder/offeror's firm: \_\_\_\_\_

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

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Name of DBE firm: \_\_\_\_\_

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

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

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

Description of work to be performed by DBE firm:

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-----  
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The bidder/offeror is committed to utilizing the above-named DBE firm for the work described above. The estimated dollar value of this work is \$ \_\_\_\_\_.

**Affirmation**

The above-named DBE firm affirms that it will perform the portion of the contract for the estimated dollar value as stated above.

By \_\_\_\_\_

(Signature) (Title)

**If the bidder/offeror does not receive award of the prime contract, any and all representations in this Letter of Intent and Affirmation shall be null and void.**



**APPENDIX 6  
SAMPLE BID DOCUMENT**

**INVITATION**

**Central New York Regional Transportation Authority  
200 Cortland Avenue  
P.O. Box 820  
Syracuse, New York 13205-0820**

**FOR BIDS**

**IMPORTANT:  
TO BIDDERS”  
HEREIN**

**SEE “NOTICE  
CLAUSES**

**BIDS MAY BE SENT TO THE ABOVE ADDRESS ONLY TO THE ATTENTION OF THE DESIGNATED  
CONTACT IDENTIFIED BELOW. QUESTIONS OR REQUESTS FOR CLARIFICATION MUST BE MADE  
TO THE DESIGNATED CONTACT IN WRITING.**

**(E-Mail or Facsimile Bid Submissions Are NOT Acceptable)**

<b>BID OPENING</b> Thursday <b>DATE:</b> <u>August 8, 2019</u> <b>TIME:</b> <u>2:00 PM Eastern Time</u>	<b>TITLE:</b> Centro of Oneida Garage Office and Break-Room Construction and Renovation <b>PRE-BID Meeting</b> will be held on Tuesday, July 30, 2019 at 10:00 AM at 135 Leland Ave., Utica, NY 13502
<b>INVITATION FOR BIDS NUMBER:</b> 2019-028-GR	<b>SPECIFICATION REFERENCE:</b> <i>[As Incorporated in the Invitation For Bids]</i>
<b>CONTRACT PERIOD: One Time Purchase</b>  <div style="text-align: center;"> <b>Commencement Date:</b> <u>September 1, 2019</u>    <b>Completion Date:</b> <u>December 1, 2019</u> </div>	
<b>DESIGNATED CONTACT:</b> Edward J. Moses Jr.	
Telephone No. (315) 442-3368 E-mail address: ejmoses@CENTRO.org	

The bid must be fully and properly completed and executed by an authorized person. **By signing the bid, you certify your express authority to do so on behalf of yourself, your company, or other entity and full knowledge and acceptance of this INVITATION FOR BIDS, including Appendix I (Standard Clauses For New York State Contracts), Appendix II (Affirmative Action and Minority- and Women-Owned Business Enterprise Contract Clauses), Appendix III (FTA Contract Clauses), State Finance Law §139-j and §139-k (Procurement Lobbying) and all other applicable laws, rules and regulations, and that all information provided is complete, true and accurate. Further, the bidder affirms that it understands and agrees to comply with the Central New York Regional Transportation Authority’s procedures relative to permissible contacts as required by State Finance Law §139-j (3) and §139-j (6) (b).** Information may be accessed at:

Procurement Lobbying: <http://www.ogs.ny.gov/aboutOgs/regulations/defaultAdvisoryCouncil.html>

<b>Bidder’s Federal Tax Identification Number:</b> <i>(Do Not Use Social Security Number)</i>	<b>NYS Vendor Identification Number:</b> <i>(See “New York State Vendor File Registration” clause)</i>
Legal Business Name of Company Bidding:	
D/B/A - Doing Business As (if applicable):	
Street	City
State	Zip
County	
If you are not bidding, place an “x” in the box and return this page only. <input type="checkbox"/> <b>WE ARE UNABLE TO BID AT THIS TIME BECAUSE</b> _____	
Bidder’s Signature:	Printed or Typed Name:
Title:	Date:
Phone : (    )       -       ext (    )	Toll Free Phone : (    )       -       ext (    )
Fax : (    )       -       ext (    )	Toll Free Fax : (    )       -       ext (    )
E-mail Address:	Company Web Site:

**FOR PROCUREMENT PERSONNEL USE ONLY**

<b>P.R. #</b>	Responsive <input type="checkbox"/> Responsible <input type="checkbox"/> Forms complete and included <input type="checkbox"/>	Non-responsive <input type="checkbox"/> Not Responsible <input type="checkbox"/> Incomplete <input type="checkbox"/>
<input type="checkbox"/> <b>Bidder not identified as ineligible on SAM</b> <input type="checkbox"/> <b>Bidder not identified on New York List of Debarred Contractors</b>		

**A. Invitation for Bids**

- I. Introduction and General Information<sup>1</sup>
- II. Bid Submission Terms and Instructions
- III. Scope of Performance and Specifications
  - A. Drawings and Specifications Attached
- IV. General Terms and Conditions
- V. Bidder's Signature Page

**B. Bid Forms with Bid Submission Checklist**

- I. Bid Forms and Instructions
- II. Bid Forms to be Completed by All Bidders and Submitted with All Bids

*Exhibit 1:* Amendment and Addendum Certification

*Exhibit 2:* Official Tender Form

*Exhibit 3:* Certificate and Acknowledgment of Authority

*Exhibit 4:* Non-Collusive Bidding Certification

*Exhibit 5:* Disclosure and Certification of Responsibility and Eligibility

*Exhibit 6:* Iranian Energy Sector Divestment Certification

*Exhibit 7:* New York State Department of Taxation and Finance Form ST-220-CA

*Exhibit 8:* Bidder References

*\*Necessary Supporting Documents which must accompany Bids are identified in Section II of the Bid Forms Instructions.*

**C. Federal Certifications and Checklist**

- I. Federal Certification Checklist
- II. Certifications to be Completed by All Bidders and Submitted with All Bids

*Exhibit F1:* Disadvantaged Business Enterprise Certification

*Exhibit F2:* Suspension and Debarment Certification

*Exhibit F3:* Lobbying Certification and Disclosure

*Exhibit F4:* Buy America Certification

*Exhibit F5:* Seismic Safety Certification

**D. Appendices**

- I. New York State Standard Contract Clauses
- II. Federal Transit Administration Contract Clauses and Protest Procedure

**E. Supplement**

- I. Relevant Provisions of New York State Laws and Regulations

**I. INTRODUCTION AND GENERAL INFORMATION**

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<sup>1</sup> The Central New York Regional Transportation Authority and its subsidiaries do not discriminate against employees, potential employees, bidders or potential bidders because of race, creed, color, national origin, sex, age, disability or marital status, and will undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination.

**IMPORTANT NOTICE TO POTENTIAL BIDDERS: Receipt of these bid documents does not indicate that the Central New York Regional Transportation Authority has pre-determined your company's qualifications to receive a contract award. Such determination will be made after the bid opening and will be based on our evaluation of your bid submission compared to the specific requirements contained in this Invitation for Bids.**

The Central New York Regional Transportation Authority (the “CNYRTA”)<sup>2</sup> is requesting bids from qualified companies and individuals (“Bids” and “Bidders” respectively) to provide the goods and/or services described in Section III (the “Performance”) under the specifications, terms and conditions more fully described in this Invitation for Bids and accompanying supporting documents (the “Bid Package”).

A contract award based on this Invitation for Bids (“IFB”), if any, shall be made to the Bidder who submits a responsive bid for the lowest price, and who the CNYRTA determines is eligible and responsible (the “Successful Bidder”). Any such contract award will obligate the Successful Bidder to perform in accordance with the terms and conditions set forth in this Bid Package, which terms and conditions are not subject to modification.

All Bid submissions received in response to this IFB will constitute firm offers and will not be revocable for a period of ninety (90) following the bid opening date.

1. Reservation of Rights

With respect to this IFB, the CNYRTA reserves the right to: (1) reject any or all Bids received; (2) at the CNYRTA’s sole discretion, withdraw the IFB at any time; (3) make a contract award under this IFB, in whole or in part; (4) disqualify any Bidder whose conduct and/or Bid fails to conform to the requirements contained herein; (5) use Bid information and/or investigation to evaluate a Bidder’s qualifications, experience, ability or financial standing; (6) amend the IFB specifications to correct errors or oversights, or to supply additional information as it becomes available at any time prior to Bid Opening; (7) direct Bidders to submit Bid modifications addressing any IFB amendments; (8) change any of the scheduled dates; (9) eliminate any mandatory, non-material specifications that cannot be complied with by all prospective Bidders; (10) waive any requirements that are not material; (11) negotiate with the Successful Bidder within the scope of the IFB in the best interest of the CNYRTA and State of New York; (12) conduct contract negotiations with the next responsive and responsible Bidder in the event the CNYRTA is unsuccessful in negotiating with the Successful Bidder; (13) utilize any and all ideas submitted in the Bids received; and (13) require clarification from any or all Bidders at any time during the procurement process, and/or correction of any arithmetic errors to assure the CNYRTA has a full and complete understanding of the Bid and/or to determine a Bidder’s compliance with the requirements herein.

2. Bidders Must be Responsible and Bids Must be Responsive

This procurement is funded, at least in part, with assistance from the Federal Transit Administration (“FTA”). Consequently, Federal transit law permits the CNYRTA to make contract awards to responsible Bidders capable of successfully and acceptably completing the Performance described in Section III. Before any contract award is made based on a Bid received in response to this IFB, the CNYRTA will consider issues of Bidder responsibility, which include, but are not necessarily limited to, matters of integrity, compliance with public policy, record of past performance and financial and technical resources. No Bidder excluded from participating in State or Federal government contracts shall be considered responsible, and any Bid submitted by such Bidder shall not be considered for contract award.

To be deemed responsive to this IFB, Bidders must address their qualifications, ability and methodology for completing Performance by submitting the Bid Package as directed. In the event a Bid is determined by the CNYRTA to be “non-responsive” (the Bidder fails to demonstrate it meets all of the requirements set forth in this IFB and/or any required information or documentation is incomplete or omitted), the CNYRTA is legally required to disqualify such Bid and will not evaluate it any further for a contract award. However, the CNYRTA may, in its sole discretion, provide the Successful Bidder with an opportunity to complete its Bid Package prior to contract award by correcting and/or completing information that the CNYRTA, in its sole discretion, considers an informality.

To facilitate the CNYRTA’s evaluation of Bids submitted in response to this IFB, Bidders should follow all of the procedures and instructions respecting Bid submission contained in this Bid Package and ensure full and accurate completion of all forms in accordance with their instructions. All necessary forms, together with instructions, are attached as Exhibits and accompanied by a “Bid Submission Checklist” and “Federal Certifications Checklist,” which identify the necessary components of a Bid. **Bidders must affix the Bid Submission Checklist and Federal Certification Checklist as the first two pages of their Bid.**

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<sup>2</sup> Reference to the Central New York Regional Transportation Authority, where applicable, shall include the following subsidiary entities: (1) CNY Centro, Inc.; (2) Centro of Oswego, Inc.; (3) Centro of Cayuga, Inc.; (4) Centro Parking, Inc.; (5) Centro Call-A-Bus, Inc.; (6) Centro of Oneida, Inc.; and (7) Intermodal Transportation Center, Inc.

Bidders must have experience providing similar goods or services to entities of a similar size and character as the CNYRTA. To document such experience, Bidders must complete the References Form, attached hereto as an Exhibit, which requests a list of the Bidder's current and past contracts for goods or services similar to those described in Section III.

By submitting a Bid, the Bidder represents it has, or will secure if it is the Successful Bidder, the personnel necessary to perform all requirements set forth herein; which personnel shall not be employees nor affiliates of the CNYRTA. All Performance shall be completed by the Successful Bidder or under the Successful Bidder's direct supervision. All personnel engaged in Performance shall be fully qualified, authorized, certified or licensed, as necessary, under all applicable federal, state and local laws, rules and regulations.<sup>3</sup>

The CNYRTA anticipates a contract commencement date and contract term as indicated on the front page of this IFB (the "Contract Period"). Bidders must attest that they can fully perform within the Contract Period without exception in order for its Bid to be considered responsive.

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<sup>3</sup> The Successful Bidder must disclose to the CNYRTA if any person involved in the performance contemplated in this IFB is serving or has served a sentence in a penal institution.

## II. BID SUBMISSION TERMS AND INSTRUCTIONS

**NOTICE TO POTENTIAL BIDDERS:** Bidders assume all risks for timely, properly submitted Bids. Bids received after the Opening Date and time will be rejected and returned to the Bidder unopened. E-mail or facsimile Bids are not acceptable, will be considered non-responsive and will not be evaluated for a contract award. All Bidders submit Bids entirely at their own risk and have no express or implied right to reimbursement for costs or expenses incurred in connection with preparing or submitting a Bid in response to this IFB.

Each Bid shall be subject to all requirements, specifications and instructions set forth herein. Bids must include a fully completed and executed Invitation for Bids, Bid Submission Checklist, Federal Certifications Checklist, fully completed and executed Bid Forms and fully completed and executed Federal Certifications, all of which are provided herewith as Exhibits (the "Bid Documents").

Incomplete Bids or Bids not submitted on the forms provided will be considered non-responsive and may be rejected. The CNYRTA may or may not, within its sole discretion, consider as informal, any Bid in or on which there is an alteration of or departure from the instructions, requirements or procedures set forth in the Bid Documents. "Conditional Bids," or those Bids which take exception to any requirement or specification, will be considered non-responsive and may be rejected.

1. **Pre-Bid Meeting- Tuesday, July 30, 2019 at 10:00 AM, 135 Leland Ave., Utica, NY 13502**

A Pre-Bid Meeting or Meetings may be held prior to Bid Opening. If such a Meeting is held, it shall be held on the date and at the time specified on the cover page of this IFB. If no date and time for a Pre-Bid Meeting is set forth on the cover page or the cover page states "no Pre-Bid Meeting," no such Meeting will be held in connection with this procurement. While attendance at any Pre-Bid Meeting is not mandatory, all prospective Bidders are encouraged to attend. Should you or your designated and authorized representative be unable to attend a Pre-Bid Meeting, you may request an alternative meeting in writing to the Designated Contact on the cover page of this IFB.

2. **Bid Opening**

Bid Opening will occur on the date and at the time identified on the cover page of this IFB (the "Bid Opening"). Bids received prior to Bid Opening will be kept unopened and secured in the CNYRTA offices. At Bid Opening, Bids will be opened and read aloud publicly. Between receipt of a Bid and the Bid Opening, no responsibility will attach to any director, officer, agent, employee or other representative or affiliate of the CNYRTA for an inadvertent, premature opening.

3. **Bidders Must Submit the Original Bid Documents and Two Copies Prior to Bid Opening**

All Bidders must submit the original, fully completed Bid Documents, together with two copies thereof, such that the Bid is received by the Designated Contact identified on the cover page of this IFB prior to Bid Opening.

4. **Bids Must be Sent or Delivered in a Properly Marked and Sealed Envelope or Box**

Bid Documents must be enclosed in a sealed envelope or box. The envelope or box must be marked with the words "BID ENCLOSED" and should state the Bid Title and Bid Opening information. Failure to properly identify a Bid may result in rejection or premature opening, which may further result in compromised confidentiality.

5. **Bid Delivery**

All bids must be delivered to:

**Central New York Regional Transportation Authority  
Attention: Edward J. Moses Jr.  
200 Cortland Avenue, P.O. Box 820  
Syracuse, New York 13205-0280**

6. **Modification or Correction of Bids**

Erasures or other damages on any Bid Document must be explained or noted and initialed, in each instance, by the person completing and signing the Bid Documents.

If received prior to Bid Opening, the CNYRTA will consider a correction or modification to a Bid. A correction or modification may be transmitted via electronic means, provided that it is confirmed in a certified or registered letter to the CNYTRA bearing the Bidder's signature and a post office time stamp evidencing mailing prior to Bid Opening.

7. Withdrawal of Bids

A Bid may be withdrawn by a Bidder prior to Bid Opening upon written request, including by electronic means, provided the electronic withdrawal is confirmed by certified or registered letter to the CNYTRA bearing the Bidder's signature and a post office time stamp evidencing mailing prior to Bid Opening.

**NO BID MAY BE WITHDRAWN WITHIN A PERIOD OF NINETY (90) DAYS FOLLOWING THE BID OPENING. NEGLIGENCE OR ERROR ON THE PART OF A BIDDER IN PREPARING A BID CONFERS NO RIGHTS TO WITHDRAWAL OF SUCH BID AFTER BID OPENING.**

8. Single Bid or Too Few Bids

In the event that only one Bid, or if, in the sole opinion of the CNYRTA, too few responsive and responsible Bids are received to ensure that the prices contained in such Bids are reasonable, the CNYRTA may terminate this IFB or may request a cost or price analysis from the Bidder(s). A cost or price analysis, if any, shall provide sufficient detail as to enable the CNYRTA to determine and ensure that the Bid(s) received set forth a reasonable price. Based on such price or cost analysis, the CNYRTA may (1) make a contract award by negotiation, or (2) upon the CNYRTA's determination that the price or cost analysis unacceptable, as determined by the CNYRTA at its sole discretion, the CNYRTA may reject all Bid(s).

9. Death or Disability of Bidder

In case of the death or disability of one or more of the persons referred to as the Bidder, or the Principal(s) of the Bidder, the rights and duties of such Bidder shall devolve upon his/her/its survivor(s), who shall be obligated to perform in accordance with the terms set forth herein. The CNYRTA shall be promptly notified in writing of the death or disability within fifteen (15) days and shall retain the right to cancel a contract awarded hereunder due to such death or disability.

10. Service of Notice

Whenever provision is made in this IFB for the giving of any notice to a Bidder, its deposit in any post office or post office box, enclosed in a postpaid wrapper addressed to the Bidder at his/her/its office or hand delivery to his/her/its office shall be sufficient service thereof as of the date of such deposit or delivery, except to the extent, if any, otherwise provided herein. Until further notice to the CNYRTA, the Bidder's office will be that stated in its Bid. Notices may also be served personally upon the Bidder; or if the Bidder be a partnership, upon any partner; or if the Bidder be a corporation, upon any officer, director, or managing or general agent.

11. Contract Awards Made Under this Invitation for Bids

Acceptance by the CNYRTA of a Bid Package or Bid submitted by a Bidder shall constitute a contract governed by the terms set forth herein. The CNYRTA shall determine, in its sole discretion, if a separate contract or other written instrument, whether or not requested by the Successful Bidder, shall be entered into, even if the provisions of such separate contract or other written instrument are identical to the provisions set forth herein.

The CNYRTA may accept a Bid by letter or other writing delivered to the Successful Bidder in any manner consistent with the Service of Notice provision above, and any such acceptance shall be sufficient to obligate the Successful Bidder to complete Performance as described in Section III.

12. Contract Closeout Requirements

By submitting a Bid, the Successful Bidder agrees to cooperate with the CNYRTA and to provide any and all materials and documents contained in the Contract Closeout Package. For additional information related to Contract Closeout requirements, please request such information from the Designated Contact.

### III. SCOPE OF PERFORMANCE AND SPECIFICATIONS

#### 1. Description of Performance and Specifications

#### TECHNICAL SPECIFICATIONS AND DRAWINGS ATTACHED AS SEPARATE DOCUMENTS

Centro of Oneida  
135 Leland Ave.  
Utica, NY 13502

A pre-bid meeting and walk-through will be held on Tuesday, July 30, 2019 at 10 AM

Any questions that arise from the meeting must be submitted in writing, directed to Edward J. Moses, Jr., Director of Facilities, [ejmoses@centro.org](mailto:ejmoses@centro.org), or fax 315-442-3301

NYS DOL PREVAILING WAGE INFORMATION:  
PRC# 2019009229

<http://apps.labor.ny.gov/wpp/publicViewProject.do?method=showIt&id=1482883>

WAGE Schedule Attached as separate document

#### BONDING REQUIREMENTS

- 5% BID Bond Required from all respondents
- 100% Performance Bond Required from contractor awarded contract
- 50% Payment Bond required from contractor awarded contract.

#### 2. Additional Performance Requirements

**Bidder Assurances:** Bidder warrants that it has carefully reviewed the needs of the CNYRTA for the Performance described in this Bid Package, that it has familiarized itself with the specifications and is fully capable of completing Performance according to the representation made in its Bid. The Bidder warrants and affirms that the terms of this IFB and any resulting contract do not violate agreements to which the Bidder is a party and that the Bidder's other contractual obligations will not adversely impact its ability to perform hereunder.

**Insurance:** During the Contract Period, the Successful Bidder shall maintain insurance at its own expense for itself and any other person or entity acting for or on its behalf with respect to the Performance. All required coverage shall be written through insurance carriers licensed to do business in the State of New York and shall be amended to provide sixty (60) days prior written notice of cancellation, non-renewal or reduction in coverage to the CNYRTA and to eliminate the insurance carriers' rights of subrogation as they pertain to the CNYRTA.

**All liability insurance policies secured and maintained by the Successful Bidder shall include the CNYRTA, its related entities and its Directors, Officers, Agents, Employees, guests and invitees as additionally named insureds.<sup>4</sup>** All insurance policies must state that the coverage is primary insurance protection on behalf of the CNYRTA, and at no time may any liability insurance policy eliminate or reduce the coverage provided to the CNYRTA in the event of a breach by the Successful Bidder, its agents, employees, officers, directors and/or subcontractors to comply with the terms, provisions and conditions of such liability insurance policies.

For any liability coverage provided on a claims-made basis, the policy date or retroactive date shall predate this contract. Termination of a claims-made policy or applicable reporting period shall be no earlier than five (5) years after the actual date on which Performance is completed and accepted by the CNYRTA.

Certificates of insurance must be filed with the CNYRTA by sending or delivering them to the CNYRTA, Attention: Procurement, 200 Cortland Ave., PO Box 820, Syracuse, NY 13205-0820. All certificates must contain specific language adequately demonstrating compliance with all insurance requirements. The Bidder agrees to provide the CNYRTA with physical certified copies of required insurance policies.

#### Required Coverage:

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<sup>4</sup> See Footnote 2 for the CNYRTA's related entities which must be identified as additionally named insureds.

a. Worker's Compensation, Employers Liability, and Disability Insurance

By submitting a Bid, the Successful Bidder agrees that it will secure Worker's Compensation Insurance and keep it in effect during the life of a contract awarded under this IFB for the benefit of such employees as are required to be insured by the provisions of the New York State Worker's Compensation Law, and also by the provisions of Article 9 of the Worker's Compensation Law known as the Disability Benefits Law. The Successful Bidder further agrees that any contract awarded hereunder shall be void and of no effect unless it complies with this provision.

b. Comprehensive General Liability Insurance

By submitting a Bid, the Successful Bidder Agrees that it will secure Comprehensive General Liability Insurance and keep it in effect during the life of a contract awarded under this IFB, and that such Insurance shall, at a minimum, include the following coverage:

- Premises-Operations;
  - Products/Completed Operations (to be kept in force for a minimum of two years from the date performance is completed);
- Contractual;
- Broad Form Property Damage;
- Independent Contractor; and
- Personal Injury Liability, Hazards A, B and C.

Each policy shall have Bodily Injury and Property Damage limits of not less than:

- \$1,000,000 per occurrence;
- \$2,000,000 Products/Completed Operations Aggregate;
- \$1,000,000 Personal & Advertising Injury Aggregate; and
- \$2,000,000 General Aggregate.

c. Comprehensive Automobile Liability Insurance

The Successful Bidder must maintain Comprehensive Automobile Liability Insurance including coverage for owned, non-owned or hired automobiles with limits not less than \$1,000,000 per accident for bodily injury or property damage.

d. Excess (Umbrella) Liability Insurance

The Successful Bidder must maintain Excess (Umbrella) Liability coverage providing Bodily Injury and Property Damage Liability coverage with a limit not less than \$1,000,000 per occurrence and \$1,000,000 aggregate.

**THE CNYRTA RESERVES THE RIGHT TO AMEND THE INSURANCE REQUIREMENTS AS IT MAY DEEM NECESSARY OR APPROPRIATE AT ANY TIME AND IN ITS SOLE DISCRETION.**

**Subcontracting:** Prior to or during Performance, the Successful Bidder is required to obtain the CNYRTA's written approval to subcontract any portion of the Performance. In order to obtain subcontracting approval, the Successful Bidder must submit the name(s) and address(es) of all proposed subcontractors to the CNYRTA, together with a description of the portion of work the proposed subcontractor(s) is (are) to perform, and provide any and all necessary information tending to prove that the proposed subcontractor(s) has (have) the necessary skill, experience and financial resources to so perform. By submitting a Bid, the Successful Bidder agrees to provide the CNYRTA with copies of all contracts with subcontractors for any part of the Performance.

The Successful Bidder shall have the sole liability and responsibility to the CNYRTA for any and all acts, omissions or defaults of approved subcontractor(s) and any person or entity acting for or on behalf of such subcontractor(s), each of whom for this purpose is deemed an agent or employee of the Successful Bidder to the extent of the subcontract. The Successful Bidder must require the subcontract(s) to execute a written agreement binding it to the terms and conditions set forth in this IFB applicable to the subcontracted portion of the Performance.

The CNYRTA encourages all Bidders to consider subcontracting as a means of achieving the goals for disadvantaged, minority- and woman-owned business enterprise participation set forth in Appendix II and Appendix III. By submitting a Bid, the Successful Bidder agrees to provide the CNYRTA with documentation of certification for any disadvantaged, minority- and woman-owned business subcontractor(s).

**Performance and Acceptance of Work:** All services or work required to be performed or materials or goods to be supplied shall be performed or supplied as promptly as possible, and in any event, within the time set forth herein, it being



understood that the time within which the work, services, materials or goods are performed or supplied is of primary importance and the essence of this procurement. All work, services, materials or goods rendered or provided hereunder are subject to approval and acceptance by the CNYRTA; however, such approval and acceptance shall not relieve the Successful Bidder from the obligation to correct and/or replace any incomplete, inaccurate or defective work, services, materials or goods, all of which shall be promptly remedied by the Successful Bidder on demand at no cost to the CNYRTA. The Successful Bidder agrees, by submitting a Bid, that it will do everything necessary and proper, whether or not incidental to or in connection with, the work, services, materials or goods contemplated hereunder to properly and completely perform in accordance with the terms and conditions set forth herein.

**Change Orders and Approvals:** Any change orders related to a contract awarded under this IFB and any amendments hereto, if any, shall be conditioned upon and subject to written approval of the CNYRTA and, if applicable, the approvals of the New York State Attorney General and the New York State Office of the State Comptroller or, if applicable, an applicable federal official or designee. Any change prior to or during Performance must be made in writing by the party seeking the change and accompanied by cost justification documentations. Any change orders must be approved in a writing signed by the CNYRTA and a designated representative of the Successful Bidder.

**Contract Time Extensions:** Upon written request by the Successful Bidder, contract time extensions will be considered in light of whether they are permissible or impermissible. A time extension which constitutes a major deviation from the Performance described in Section III may not be granted without sole source justification.

**Guarantees and Warranties:** By submitting a Bid, the Bidder, particularly the Successful Bidder, agrees that once approved by CNYRTA, its standard warranty provisions, whether manufacturer's or Bidder's, will govern this Bid, provided, however, that each unit delivered or services rendered must, at a minimum, be guaranteed against faulty material and workmanship for a period of one year from the date of acceptance, that during such one year period the Successful Bidder agrees to replace the unit or part affected without material or labor cost to the CNYRTA, and with all charges being borne wholly and solely by the Successful Bidder. The Successful Bidder further agrees that in the event that the warranty provisions contained in the specifications contained herein require a warranty or guarantee from the Successful Bidder greater than one year, that such provisions contained in the specifications shall govern.

**Licenses & Certifications:** The Successful Bidder must, at its own expense, procure, post and maintain, for the life of any contract award and in all places designated by the laws of the United States, the State of New York or any of their subdivisions, all licenses, permits and/or certifications required for its business and/or for the Performance or any part thereof. Failure to maintain the same during any Contract Period shall be grounds for the immediate termination of the contract by the CNYRTA. In the event that the Successful Bidder's permits, certifications and/or licenses are canceled, modified or suspended during the Contract Period, the CNYRTA may immediately terminate the contract upon written notice.

3. Location of Performance

Centro Oneida  
135 Leland Ave.  
Utica, NY 13502

4. Billing and Payment Requirements

**No Responsibility for Additional Costs:** The CNYRTA shall not be held responsible for any services, costs or expenses provided or rendered by the Successful Bidder outside the scope of this IFB unless the Successful Bidder obtains the CNYRTA's written approval for such additional services, costs or expenses prior to providing or rendering the same.

**Payment Terms:** Payments pursuant to a contract awarded under this IFB shall be made to the Successful Bidder in accordance with New York State Finance Law, Article 11-A, and any relevant federal regulations upon receipt of a proper invoice. Bidders are hereby advised that the State and/or Federal budget and/or the appropriation of budgeted funds to the CNYRTA may be delayed in any given fiscal year due to circumstances beyond the CNYRTA's control and may result in delayed payment, which shall not constitute a breach of contract by the CNYRTA.

Proper invoices must include reference to the Purchase Order Number provided by the CNYRTA in its Notice to Proceed, together with all necessary and appropriate information and supporting documents, in order for the CNYRTA to make payment. In accordance with section 2880 of the New York Public Authorities Law, the CNYRTA shall initiate payment within thirty (30) days, excluding legal holidays, from receipt of a proper invoice.

Payments will be made electronically in compliance with the New York State Comptroller's electronic payment procedures and similar federal regulations (unless payment by paper check is expressly authorized by the CNYRTA, in

its sole discretion, due to extenuating circumstances). Electronic Payment Authorization forms are available at the New York State Comptroller's website: [www.osc.state.ny.us/epay/index.htm](http://www.osc.state.ny.us/epay/index.htm), by e-mail at [epunit@osc.state.ny.us](mailto:epunit@osc.state.ny.us) , or by telephone at 518-486- 1255. If prompt payment is not made, interest shall accrue on the properly submitted invoice at the same rate as the rate the CNYRTA is receiving at such time in its invested funds, unless an extension of time to make a payment is appropriate due to enumerated conditions set forth in the CNYRTA's Procurement Manual which is available on the CNYRTA's website.

The CNYRTA may not use FTA assistance to make payments to third party contractors before the contractor has incurred the costs for which the payments would be attributable unless the requested advanced payment is supported by a sound business reason, adequate security for the advanced payment has been secured and FTA's written approval is given in advance.<sup>5</sup>

The CNYRTA may use FTA assistance to make progress payments if adequate security is obtained for such payments and the CNYRTA possesses sufficient documentation to substantiate the portion of Performance for which the progress payment is requested.

#### 5. Compliance and Reporting Requirements

By submitting a Bid, the Successful Bidder agrees to fully cooperate with the CNYRTA by timely completing and providing any and all compliance and reporting documents. Particularly, by submitting a Bid, the Successful Bidder agrees to complete additional forms and reports prior to contract award and periodically throughout Performance.

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<sup>5</sup> The FTA and the CNYRTA recognize that advanced payments are required or customary in some cases, including but not limited to, public utility connections and services, rent, tuition, insurance premiums, subscriptions to publications, software licenses, construction mobilization costs, transportation, hotels and conference and convention registration. Accordingly, FTA assistance may be used to support or reimburse such costs or acquisitions, and FTA concurrence is only required where such advanced payments exceed \$100,000.00.

### **III A. SUPPORTING DOCUMENTS**

**[SPECIFICATIONS, DRAWINGS, AND PREVAILING WAGE ATTACHED AS SEPARATE DOCUMENTS]**

[ ]

#### IV. GENERAL TERMS AND CONDITIONS.

**PROVISIONS OF LAW DEEMED INSERTED:** Each and every provision of law or clause required to be set forth or included in this Invitation for Bids and any resulting contract award shall be deemed inserted herein, such that a contract resulting herefrom shall be read and enforced as though each and every required provision or clause were so set forth. If through mistake or otherwise, any such provision or clause is not included as required, or is not correctly included, and upon the written notice of either party, the contract shall be forthwith physically amended by the CNYRTA to insert, modify or correct such provision or clause.

- 1. New York State Clauses:** Any contract award made under this IFB shall include the Standard Clauses for all New York State Contracts (attached hereto as **Appendix I**), the provisions of which are hereby incorporated as if fully set forth herein, and which shall take precedence over any conflicting provision in this IFB or any Bid.
  - 2. Equal Employment and Affirmative Action Clauses:** Any contract award made under this IFB shall include the Equal Employment Opportunity and Affirmative Action Clauses (attached hereto as **Appendix II**), the provisions of which are hereby incorporated as if fully set forth herein, and which shall take precedence over any conflicting provision in this IFB or any Bid.
  - 3. Federal Transit Administration Clauses.** Any contract award made under this IFB shall include the Federal Transit Authority Clauses (attached hereto as **Appendix III**), as they may be applicable to the particular procurement, the provisions of which are hereby incorporated as if fully set forth herein, and which shall take precedence over any conflicting provision in **Appendix I**, **Appendix II**, this IFB or any Bid.
  - 4. Compliance:** The Successful Bidder must comply with all applicable federal, state and local laws, ordinances, orders, rules and regulations. The Successful Bidder shall be liable for any and all costs, expenses or damages whatsoever associated with any breach of any applicable law, ordinance, order, rule or regulation caused by the Successful Bidder's negligent or willful acts or omissions, or the negligent or willful acts or omissions of Successful Bidder's agents, officers, employees, subcontractors or any other acting on the Successful Bidder's behalf.
  - 5. Free and Open Competition:** Except in the case of certain governmentally mandated set-asides, the CNYRTA supports free and open competition. Whenever possible, terms, specifications and conditions are designed to accomplish such free and open competition to the extent possible while also satisfying the CNYRTA's procurement needs.
  - 6. Governing Law, Jurisdiction and Venue:** This IFB, Bid, and any subsequent contract award shall be construed and enforced in accordance with the laws of the State of New York, and shall not be construed against the CNYRTA as drafter of the Bid Package. Jurisdiction of any litigation respecting this IFB, Bid or subsequent contract award shall be in New York, with venue in a court of competent jurisdiction located in Onondaga County.
- The Bidder agrees that service of process on the Bidder in relation to such jurisdiction may be made as provided in Section I by registered or certified mail, return receipt requested, addressed to any office actually maintained by the Bidder or by actual personal delivery to the Bidder if the Bidder be an individual; to any partner if the Bidder be a partnership; or to an officer, director or managing or general agent if the Bidder be a corporation. Such service shall be deemed sufficient when jurisdiction would not lie because of the lack of basis to serve process in the manner otherwise provided by law. In any case, however, process may be served as stated above whether or not it might otherwise have been served in different manner.
- 7. Conflict of Terms and Conditions:** Any conflict of terms among the Bid Documents or contained in the Bid Package shall be resolved in the following order of precedence: (i) Federal Transit Administration Contract Clauses, annexed hereto as **Appendix III**, (ii) New York Contract Clauses and other required clauses, annexed hereto as **Appendix I and II**; (iii) the terms set forth in this Bid Package; and (iv) the Bid.
  - 8. Procurement Lobbying:** Federal laws and regulations impose disclosure requirements of and/or restrictions on procurement lobbying. A Federal Certification describing such requirements and restrictions and the procurements to which they are applicable is attached as an Exhibit. State Finance Law, sections 139-j and 139-k impose restrictions on communications between the CNYRTA and Bidders during the procurement process. Particularly, Bidders may not have any communications with the CNYRTA intended to influence this procurement from the earliest notice of intent to solicit Bids until a contract is awarded (the "Restricted Period") other than to/with the Designated Contact identified on the cover page of this IFB. Any CNYRTA employee contacted by the Bidder or prospective Bidder is required to obtain, report and retain information concerning the contact. Such information may be used in Bid evaluation respecting the responsibility of the Bidder making contact. Certain findings of non-responsibility may result in disqualification or Bid rejection. In the event two such findings are made within a four-year period, a Bidder will be debarred from

obtaining governmental procurement contracts. Additional information concerning communications during the Restricted Period is available at the New York State Office of General Services website.

**9. Permitted Communications with the Designated Contact During the Restricted Period:** In the event a Bidder has a question or requires clarification regarding any part of this IFB, such questions or requests for clarification must be made to the Designated Contact in writing. The CNYRTA will not respond to any verbal inquiries.

The CNYRTA's response to properly submitted questions or requests for clarification will be in writing. Such responses, if they change or clarify the IFB in a substantial or material manner, will be forwarded by addenda to all individuals or companies to whom a Bid Package was sent prior to Bid Opening.

**10. Non-Collusive Bidding:** In accordance with section 139-d of the State Finance Law, Bidders for contracts awarded on a competitive bid basis must affirm, under penalty of perjury, that their Bids were arrived at independently and without collusion aimed at restricting competition. All Bidders must further affirm that, at the time of submission, an authorized and responsible person executed and included a Non-Collusive Bidding Certification with their Bid. Such Affirmation is attached hereto as an Exhibit.

**11. Civil Rights:** The Successful Bidder must comply with federal laws and regulations, and the provisions of the New York Executive Law and the New York Civil Rights Law, must furnish all information and reports deemed necessary by the State Division of Human Rights and will allow access to books, records and accounts by the State Industrial Commissioner for the purpose of ascertaining compliance with the non-discrimination clauses contained herein or attached hereto, the Executive Law and the Civil Rights Law.

**12. Equal Employment Opportunities, Affirmative Action Requirements for Minorities, Women and Disadvantaged Business Enterprises:** By submitting a Bid, the Bidder agrees to all of the terms and conditions of **Appendix II and paragraph 6 of Appendix II**, which terms and conditions are hereby incorporate as if fully set forth herein. The Successful Bidder is required to ensure that the provisions of **Appendix III and paragraph 6 of the Federal Transit Administration Contract Clauses in Appendix II** are included in every subcontract it enters for any portion of the Performance in a manner that the requirements contained therein will be binding upon each subcontractor. If the Successful Bidder subcontracts any portion of the Performance to a certified disadvantaged business enterprise or a minority- or woman-owned business enterprise in order to comply with the two percent (2%) and twenty percent (20%) participation goals, respectively, more specifically described in Appendix II, Appendix III and the Supplement, the Successful Bidder must provide the CNYRTA with a copy of such Certification.

By submitting a Bid, the Successful Bidder agrees to comply with all requirements to provide information regarding Performance through the New York State Contract Compliance Module. More information about the Module and the reporting requirements are available through the CNYRTA's website.

**To locate suitable New York State Certified minority- or woman-owned business enterprises, a directory is available through the New York State Division of Minority and Woman's Business Development web site: <https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp?TN=ny&XID=3582>**

Any Bidder who willfully and intentionally fails to comply with the MWBE participation requirements shall be liable to the CNYRTA for all damages described herein as well as liquidated damages. Damages shall be either (a) calculated based on the actual cost incurred by the CNYRTA for personnel, supplies and overhead relating to establishing, monitoring and reviewing MWBE participation goals, affirmative action programs and equal employment opportunity compliance, or (b) the amount stated in the Scope of Performance and Specifications section, if any.

**13. Recycled Products and Sustainability:** The Successful Bidder shall comply with, when applicable, the policy of New York State and the CNYRTA that all purchases shall incorporate sustainable procurement policies and practices.

In accordance with the provisions of section 165(3) of the State Finance Law, the CNYRTA is required to purchase recycled products, if available, made with recycled content in accordance with rules and regulations established by the State Department of Environmental Conservation. If the cost of a recycled product does not exceed the cost of a product without recycled content by 10 percent (or 15 percent if over 50 percent of the recycled materials are generated from the New York State waste system), the recycled product must be purchased.

**14. Ethics Compliance:** All Bidders and their employees must comply with the requirements of sections 73 and 74 of the Public Officers Law, other New York State codes, rules, regulations and executive orders establishing ethical standards for the conduct of business with New York State.

By signing this IFB, each Bidder certifies full compliance with all applicable laws, codes, rules, regulations and executive orders for any present or future dealings, transactions, sales, contracts, services, offers, relationships, etc., involving New York State. Failure to comply with those provisions may result in disqualification from the bidding process, termination of a contract award and/or other civil or criminal proceedings as required by law.

**15. Independent Contractor:** The Successful Bidder and its shareholders, directors, officers, agents, employees or any other person or entity engaged in the Performance shall at all times be independent contractors and not agents, employees, joint ventures or any other similar relation to the CNYRTA. The Successful Bidder bears full and exclusive responsibility for any and all liability, loss, damages and/or expenses which may be suffered as a result of any claim, demand, suit or cause of action which may be made or held against them by reason of breach of contract, negligence, malpractice or any other cause of action on the part of the Successful Bidder, its shareholders, directors, officers, agents, employees or any other person or entity acting on its behalf.

**16. Bidder's Standard Terms:** A Bidder's standard terms and conditions will not be considered relevant to a Bid or any contract award made under this IFB and therefore should not be included as part of any Bid. Any additional terms or conditions attached to or referenced in any Bid shall not be considered part of the Bid; but rather, shall be deemed included for informational purposes only. No extraneous terms will be incorporated into a contract awarded under this IFB unless approved in writing by the CNYRTA. Receipt of any notice indicating a particular Bidder is the Successful Bidder shall not constitute acceptance of any extraneous terms contained in the Bid.

**17. The CNYRTA is a Tax Exemption Entity:** The CNYRTA is exempt from Federal, State and local taxes, thus such taxes should not be included in Bid price calculations; however, the Successful Bidder must pay all salaries and expenses of its employees, as well as all Federal Social Security taxes, Federal and State unemployment taxes, and any similar taxes when assessed or charged. The CNYRTA will furnish necessary exemption documents to the Successful Bidder.

**18. Registration to Collect Sales and Compensating Use Taxes:** Bidders must certify that they are registered with the State of New York to collect sales and compensating use taxes if and when such collection is required. A certification is provided herewith as an Exhibit. If a Bidder is not registered, the Bidder may complete New York State Department of Taxation and Finance form ST-220-TD, available at: [http://www.tax.ny.gov/pdf/current\\_forms/st/st220td\\_fill\\_in.pdf](http://www.tax.ny.gov/pdf/current_forms/st/st220td_fill_in.pdf).

**19. Notification of Errors, Inquiries and Interpretation:** It is the Bidders' responsibility to bring any technical errors or deficiencies in the Scope of Performance and Specifications to the CNYRTA's attention and to make recommendations for additional requirements deemed necessary, as standard, to complete Performance. If the CNYRTA finds an error or deficiency is significant or necessitates a material modification in the Scope of Performance and Specifications, all individuals or companies to whom/which a Bid Package was sent will be notified in writing of such change by addendum to this IFB.

**20. Rejection of Bids:** The CNYRTA reserves the right to make all decisions regarding this IFB, including, without limitation, the conclusive right to decide whether a Bid does or does not substantially comply with the requirements set forth herein and to reject any or all Bids.

**21. Interested Parties:** For the purposes of this IFB and any resulting contract award, a person shall be deemed "interested" if s/he holds any position with or employment by a Bidder and performs any functions or exercises any authority in such position or employment respecting the Performance contemplated herein. No member of the governing body of the CNYRTA, including its subsidiaries, nor any of its directors, officers, employees, agents or servants may be interested, directly or indirectly, in completing Performance during his/her tenure in such position, and for two years thereafter. Further, no member of the governing body of the locality in which the performance is to be rendered or provided, or any other public official in such locality who exercises any authority or performs any function associated with reviewing or approving the Performance shall have any interest in a contract award made under this IFB. No member of the United States Congress and no resident Commissioner shall have any interest in a contract award made under this IFB.

**22. Indemnification:** The Successful Bidder shall indemnify and hold harmless, the CNYRTA, its directors, officers, employees, agents, servants, guests, invitees or any other person or entity acting for or on behalf of the CNYRTA against risk of loss of whatever nature, including but not limited to any and all losses, expenses, damages, and liabilities, including reasonable attorney's fees, the costs of consultants and/or experts and court fees arising out of the intentional or negligent acts or omissions of the Successful Bidder or any person or entity acting on its behalf for any and all damage or liability causing bodily injury, wrongful death or property damage and arising out of or in connection with the Performance described herein whether sustained before, during or after the completion thereof. **This provision shall survive completion, expiration, cancelation or termination of any contract resulting from this IFB.**

**23. Assignment:** The Successful Bidder shall neither assign nor transfer any interest in a contract awarded under this IFB without prior written approval of the CNYRTA, which approval may be withheld for any reason. The CNYRTA specifically reserves the right to assign part of the Performance or all of the options, if any, to any other public transportation agency or government entity under inter-governmental contracting procedures. Such an assignment shall be in writing, signed by the CNYRTA and assignee and acknowledged by the Selected Bidder. All assigned Performance or option shall be completed or delivered in accordance with the terms set forth herein.

**24. Iran Divestment Act:** By submitting a Bid, the Bidder certifies that it is not on the “Entities Determined To Be Non-Responsive Bidders/Offerers Pursuant to The New York State Iran Divestment Act of 2012” list (“Prohibited Entities List”), or most current version thereof, posted on the New York State Office of General Services website at: <http://www.ogs.ny.gov/about/regs/docs/ListofEntities.pdf>; and further certifies that it will not utilize any subcontractor identified on the Prohibited Entities List during the course of Performance. Such certification is provided herewith as an Exhibit.

If the CNYRTA receive information that a person (as defined in State Finance Law section 165-a) is in violation of the above-referenced Certifications during the Contract Period, it will review such information and offer the person an opportunity to respond. If the person fails to demonstrate that it has ceased its engagement in the investment activity in violation of the Act within 90 days of a violation determination, then the CNYRTA shall take such action as may be appropriate and provided for by law, rule, or contract, including but not limited to, seeking compliance, recovering damages or declaring the Successful Bidder in default. The CNYRTA reserves the right to reject a Bid from an entity that appears on the Prohibited Entities List prior to a contract award, and to pursue a responsibility review with respect to any entity that is awarded a contract and appears on the Prohibited Entities list after a contract award.

**25. Bidder Protests and Debriefing:** (i) Bidder Protests. A Bidder has the right to protest any aspect of this procurement at the pre- or post-bid stage, and any such protests shall be governed by FTA protest procedures. The FTA protest procedures are set forth in the **Appendix III** herein. (ii) Bidder Debriefings. Upon notification of a contract awarded under this IFB, unsuccessful Bidders are entitled to, and shall receive, upon request, a debriefing concerning evaluation of their Bid and the reasons why it was not selected for a contract award. Such debriefings are typically conducted in person, but may also be conducted by video conference, telephone conference or through written summaries if agreed to by the unsuccessful Bidder. During a debriefing, the CNYRTA reserves the right to limit the discussion to the reasons the Bid was unsuccessful, the reasons the winning Bid was selected and offer advice or guidance to the unsuccessful Bidder to improve its future Bids.

**26. Dispute Resolution:** The Successful Bidder must agree to engage in a dispute resolution process with a designated officer of the CNYRTA to address issues or disputes respecting Performance. If a satisfactory resolution cannot be found, the CNYRTA reserves the right to terminate the contract. The Designated Contact identified on the front page of this IFB shall provide additional information concerning dispute resolution upon written request.

**27. No Arbitration:** Disputes involving this IFB, any Bid or contract award, including breach or alleged breach thereof, may not be submitted to binding arbitration (except where statutorily required) without CNYRTA’s written consent.

**28. Termination:** The CNYRTA shall reserve the right to terminate any contract whether or not awarded under this IFB upon prior written notice to the Successful Bidder in the event of any of, but not limited to, the following: (i) if through any cause or for any reason the Successful Bidder fails to timely and properly satisfy any obligation herein or violates any applicable law, rule, regulation, ordinance, covenant, agreement or stipulation; (ii) the Successful Bidder makes an assignment for the benefit of creditors, a petition in bankruptcy or any insolvency proceeding is filed by or against the Successful Bidder and is not dismissed within thirty (30) calendar days from the filing date, or all or substantially all of the Successful Bidder’s property is levied upon or sold in any judicial proceeding; (iii) if funds become unavailable; (iv) in the event the State Finance Law sections 139-j and 139-k certifications are found to be false or incomplete; or (v) if applicable, the Department of Taxation and Finance Contractor Certification form, ST 220-CA statements are found to be false or incomplete.

In the event of termination, all finished and unfinished Performance by the Successful Bidder hereunder shall, at the option of the CNYRTA, become the CNYRTA’s property and the Successful Bidder shall be entitled to receive reasonable compensation for any satisfactory Performance through the date of termination. Notwithstanding the above, termination shall not relieve the Successful Bidder of liability to the CNYRTA, which shall be held harmless and indemnified for any damages sustained by it or any of its employees, board members, officers, employees, agents or other representatives by virtue of the termination. Upon termination, the CNYRTA may withhold any full or partial payments for the purposes of set-off until the exact amount of damages due the CNYRTA can be determined.

**29. Contract Changes:** No changes or modifications of a contract awarded under this IFB shall be valid or enforceable unless contained in a Contract Modification approved by the CNYRTA and signed by the party to be charged therewith.

**30. Freedom of Information Law:** Bidders acknowledge that the CNYRTA is a public entity and the Bidder's proprietary information, which may include trade secrets owned by the Bidder, may be subject to disclosure pursuant to New York State Public Officers Law or similar applicable laws.

As a New York State Public Authority, any and all agreements to which the CNYRTA is a party are considered public records and are subject to disclosure under the Federal Freedom of Information Act ("FOIA") and/or the New York State Freedom of Information Law ("FOIL"). During the Bid evaluation process, the content of each Bid will be held in confidence and no details contained in any Bid will be revealed (except as may be required by law). Trade secrets or information, the disclosure of which would cause injury to the competitive position of commercial enterprises, may be protected from disclosure during and after Bid evaluation. However, it is the Bidder's obligation to bring the existence of such Trade Secret or other proprietary information to the CNYRTA's attention.

**SHOULD YOU FEEL YOUR BID CONTAINS TRADE SECRETS OR OTHER CONFIDENTIAL OR PROPRIETARY INFORMATION, YOU MUST SUBMIT A REQUEST TO EXCLUDE SUCH INFORMATION FROM DISCLOSURE IN RESPONSE TO A FOIL REQUEST. REQUESTS MUST BE IN WRITING, MUST STATE THE REASONS WHY THE INFORMATION SHOULD BE PROTECTED FROM DISCLOSURE AND MUST BE PROVIDED AT THE TIME A BID IS SUBMITTED. REQUESTS FOR EXCLUSION OF THE ENTIRE CONTENTS OF A BID IN RESPONSE TO A FOIL REQUEST HAVE GENERALLY NOT BEEN FOUND MERITORIOUS AND ARE DISCOURAGED. KINDLY LIMIT ANY REQUESTS FOR EXCLUSION OF INFORMATION FROM DISCLOSURE TO BONA FIDE TRADE SECRETS OR SPECIFIC INFORMATION, THE DISCLOSURE OF WHICH WOULD CAUSE A SUBSTANTIAL INJURY TO THE COMPETITIVE POSITION OF YOUR COMPANY.**

**31. Save Harmless; Intellectual Property Infringement:** By submitting a Bid, the Bidder agrees to save, keep, hold harmless and fully indemnify the CNYRTA and its board members, officers, agents, employees or any other person or entity acting for or on its behalf from and against any and all claims based on purported infringement of the patent, trademark, copyright or trade secret rights of any entity, person or persons in consequences of the use by CNYRTA, or by any person or entity acting for or on its behalf during the course of Performance and of which the Bidder is not lawfully entitled to sell or use, provided that the CNYRTA gives the Bidder prompt notice in writing of any demand, claim or suit together with all information necessary to defend the same.

**32. Release of Liens:** The Successful Bidder shall, at the time it certifies final payment from CNYRTA, also certify to the CNYRTA in writing that all consultants, material suppliers, subcontractors, agents and employees have been paid and that the Successful Bidder has in its possession and will provide to CNYRTA upon request and in form satisfactory to the CNYRTA, releases or waivers of liens from all consultants, material suppliers, subcontractors, employees or persons contracting with the Successful Bidder in connection with the Performance.

**33. Ownership of Documents, Records and Other Information:** All notes, estimates, designs, drawings, plans, specifications, technical data, memoranda and any other information, instrument or document produced or purchased by the Successful Bidder and paid for by CNYRTA in connection with the Performance shall be the sole property of the CNYRTA, and the CNYRTA is vested with all rights therein of whatever kind and however created, whether by common law, statutory law or by equity. The Successful Bidder agrees that the CNYRTA shall have access, at all reasonable times, to inspect and make copies of all notes, estimates, designs, drawings, plans, specifications, technical data, memoranda and any other information, instrument or document produced or purchased in connection with the Performance. The CNYRTA agrees that it will not sell, assign or modify documents, nor will it permit any other governmental or private entity to use any notes, estimates, designs, drawings, plans, specifications, technical data, memoranda and any other information, instrument or document produced or purchased in connection with the Performance, but will retain such documents for a period of not less than six (6) years.

**34. Rights and Remedies of the CNYRTA:** The CNYRTA shall have the following rights in the event it deems the Successful Bidder in breach of any term whatsoever set forth herein: (i) the right to take over and complete Performance, or any part thereof as agent for and at the expense of the Successful Bidder, either directly or through another individual or entity; (ii) the right to cancel a contract awarded under this IFB as to any or all of the Performance not completed at such time; (iii) the right to specific performance, an injunction or any other remedy; and (iv) the right to money damages.

For the purpose of this IFB and any contract awarded hereunder, breach shall include the following, whether before, during or after the time for performance of an obligation set forth herein: (i) a statement by the Successful Bidder to any representative of the CNYRTA indicating that it cannot or will not perform any one or more of its obligations; (ii) any act or omission of the Successful Bidder or any other occurrence which makes it improbable that he/she/it will be able to perform any one or more obligations contained herein; and (iii) any suspension of performance of, or absence of progress



on, any part of the obligations set forth herein which makes it improbable that he/she/it will be able to perform any one or more of its obligation(s).

The enumeration in this numbered clause or elsewhere in this Bid Package of specific rights and remedies of the CNYRTA shall not be deemed to limit any other rights or remedies which the CNYRTA would have in the absence of such enumeration. No exercise by the CNYRTA of any right or remedy shall operate as a waiver of any other rights or remedies or stop the CNYRTA from exercising any and all other rights or remedies available to it.

**35. Successors and Assigns:** The terms and conditions contained herein shall be binding upon the parties thereto and on their heirs, executors, administrators, successors and assigns; provided however, that no part of the Performance nor any moneys due or to become due the Successful Bidder may be assigned without the written consent of the CNYRTA.

**36. No Third Party Rights:** Nothing contained in this IFB is intended for benefit of third persons, except to the extent specifically provided by use of the word “benefit” or “direct right of action,” and no provision herein shall be construed as creating any third party rights.

**37. Electronic Reports and Information:** Reports and other information prepared in electronic format developed in connection with a contract award made hereunder and which is submitted to the CNYRTA, whether as a contract end item or as compliance with any terms set forth herein, must comply with the accessibility standards set forth in “Electronic and Information Technology Accessibility Standards” at 36 C.F.R. Part 1194.

**38. Environmental Laws and Hazardous Materials.** By submitting a Bid, the Bidder agrees to comply with any and all federal, state and local environmental laws, rules, regulations, ordinances, codes, directives, decrees, requirements or judgments, whether now in existence or hereafter promulgated or enacted relating to public health or safety, pollution, damage to or protection of the environment, discharge or threatened discharge of hazardous materials, as defined under applicable law, or the presence, use, manufacture, processing, distribution, treatment, storage, generation, disposal, transport or handling of hazardous materials, as defined under applicable law, or any judicial or administrative interpretations thereof. The Bidder further agrees to indemnify and hold harmless the CNYRTA from and discharge, release, spill, disposal or dumping of any hazardous, toxic, explosive, corrosive, infectious, flammable or radio active substance, waste or material, irrespective of its form, caused by the Bidder or its officers, directors, employees, agents, contractors or other associated person or entity.

**39. Terms:** Common nouns and pronouns shall be deemed to refer to the masculine, feminine, neuter, singular and plural as required by context.

**40. Section and Subsection Titles:** The section and subsection titles are inserted for convenience only, are not part of the IFB and do not in any way limit or amplify the terms and provisions herein.

**41. Counterparts:** Any document contained in this Bid Package may be executed simultaneously in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

**42. Severability:** The provisions herein shall be deemed severable, and if any provision or part thereof is held to be illegal, void, voidable, invalid, non-binding or unenforceable in its entirety, partially or as to any party for any reason, such provision may be changed, consistent with the intent of the parties as expressed herein, to the extent reasonably necessary to make the provision legal, valid, binding and enforceable. If any provision or part thereof is held to be illegal, void, voidable, invalid, non-binding or unenforceable in its entirety, partially or as to any party for any reason and if such provision cannot be changed to be consistent with the intent of the parties as expressed herein in a manner which makes it fully legal, valid, binding and enforceable, then such provisions shall be stricken and the remaining provisions shall not be affected or impaired in any way, but shall remain in full force and effect.

**43. Voluntary Bid.** By signing hereunder and submitting this Bid, Bidder hereby affirms and acknowledges that s/he, for him/herself, or as a duly authorized designee of any form of business entity, has read all parts of the Bid Package, including the Invitation for Bids and each and every form, Appendix and Supplement, and more specifically, all forms and associated instructions, New York State Standard Contract Clauses, Affirmative Action and Minority- and Woman-Owned Business Enterprise Contract Clauses, Federal Transit Administration Clauses and Relevant Provisions of New York State laws and regulations provided in the Supplement.

**BIDDER NAME:** \_\_\_\_\_ **DATE:** \_\_\_\_\_

---

Signature

---

Print Name and Title

**B. BID FORMS WITH BID SUBMISSION CHECKLIST**

**I. BID FORMS AND INSTRUCTIONS**

**NOTICE TO BIDDERS:**

**ALL BIDS MUST INCLUDE THE FOLLOWING DOCUMENTS TO BE CONSIDERED RESPONSIVE:**

- The completed Bid Submission Checklist (found on the next page);
- All forms referenced in Sections I of the Bid Submission Checklist fully completed and properly executed;
- All supporting documents referenced in Section II of the Bid Submission Checklist;
- The completed Federal Certifications Checklist; and
- All Certifications identified as requirements on the Federal Certifications Checklist fully completed and properly executed.

**PLEASE DO NOT RETURN THE FOLLOWING PORTIONS OF THE BID PACKAGE WITH YOUR BID:**

- Any forms included on the Supplemental Submission Checklist (found on the same page as the Bid Submission Checklist);
- Bid Forms Instructions;
- Appendix I (New York State Standard Contract Clauses);
- Appendix II (Federal Transit Administration Contract Clauses); and
- Supplement containing Relevant Provisions of New York Laws and Regulations.

**Please retain the above-listed portions of the Bid Package for your records or for your later use if you are the Successful Bidder.**

**BID SUBMISSION CHECKLIST**

***FOR MANDATORY INCLUSION WITH ALL BIDS***

**I. Completed and/or Signed Documents and Forms to be Submitted with Bid**

\_\_\_ Executed Invitation for Bids

E1. \_\_\_ Amendment and Addendum Certification

E2. \_\_\_ Official Tender Bid Price Summary

E3. \_\_\_ Certificate and Acknowledgment of Authority

E4. \_\_\_ Non-Collusive Bidding Certification

E5. \_\_\_ Disclosure and Certification of Responsibility and Eligibility

E6. \_\_\_ Iranian Energy Sector Divestment Certification

E7. \_\_\_ NYS Tax Form ST-220-CA

E8. \_\_\_ Bidder References

**II. Supporting Documents**

\_\_\_ Financial Statements from Most Recent Year

\_\_\_ Equal Employment Opportunity Policy Statement

\_\_\_ Supporting Documents Related to the Scope of Services and Specifications, if any are Identified in Section III(A) of the Invitation for Bids [if the Invitation for Bids does not contain a Section III(A), this requirement does not apply].

**B. BID FORMS WITH BID SUBMISSION CHECKLIST**  
**I. BID FORMS AND INSTRUCTIONS**

**BID FORMS INSTRUCTIONS**

**I. Forms Submitted with Bid**

Every Bidder must complete and submit the forms identified below with their Bid.

Executed Invitation for Bids: The Invitation for Bids contains the essential terms and conditions for this procurement. Every Bidder is required to read the Invitation for Bids and sign it on the last page as indicated. By signing the Invitation for Bids, the Bidder accepts the terms and conditions contained in it, including those set forth in Appendix I, II and III, as his/her/its contractual obligations if notified he/she/it is the Successful Bidder.

1. Amendment and Addendum Certification: The Amendment and Addendum Certification is a form which requires the Bidder to affirmatively represent that it has received, reviewed and incorporated into its Bid amendments or addendums to the IFB, and to list all such amendments and addendums, if any.

2. Official Tender Form: The Official Tender Form must be completed and signed by every Bidder. The Official Tender form includes the Bid Price, which will serve as the basis upon which contract award decisions will be made. The Bid Price constitutes a firm offer by each Bidder, which may not be changed or revoked for a period of ninety (90) days following the Bid Opening Date.

3. Certificate and Acknowledgment of Authority: Every Bidder must have authority to enter into a contract according to the terms and conditions set forth in the Bid Package and presented on the Official Tender Form. To document such authority, the individual signing the Bid Documents on behalf of each Bidder must sign the Certificate and Acknowledgement of Authority form before a Notary Public.

4. Non-Collusive Bidding Certification: Every Bidder must sign the Non-Collusive Bidding Certification before a Notary Public. This procurement involves use of State funds. Any contract award may be made only after a competitive process to the responsive and responsible Bidder with the lowest Bid Price. New York State law prohibits Bidders for contract awards funded with State monies from cooperating with one another for the purposes of restricting competition. Therefore, every Bidder must affirm he/she/it arrived at his/her/its Bid Price independently from others before a Notary Public.

5. Disclosure and Certification of Responsibility and Eligibility: The CNYRTA is not permitted to select a Bidder if the Bidder is not eligible to enter into a contract with the State of New York because he/she/it has been found non-responsible. A Bidder may be non-responsible and become ineligible to enter into a contract with New York State if he/she/it violates relevant provisions of the State Finance Law, Labor Law or other New York State laws or regulations, or any applicable federal laws or regulations. Therefore, every Bidder must disclose all prior non-responsibility determinations, and before a Notary Public, affirm whether he/she/it is included on the list of debarred persons or firms.

6. Iranian Energy Sector Divestment Certification: Every Bidder must certify, before a Notary Public, that he/she/it is not included on the list created by the State of New York of entities and individuals that have violated portions of the State Finance Law prohibiting certain dealings with Iran. The relevant provision of the State Finance Law is provided in the document entitled "Supplement: Relevant Laws and Regulations."

7. NYS Tax Form ST-220-CA: All Bidders must be eligible to collect, where appropriate, sales and use taxes. To document eligibility, all Bidders must complete the New York State Department of Taxation and Finance Contractor Certification to Covered Agency Form (form ST-220-CA).

If an entity is not eligible to collect such taxes, he/she/it may register to collect taxes by completing New York State Department of Taxation and Finance Contractor Certification form (form ST-220-TD). This form is available from the Department of Taxation and Finance at: [http://www.tax.ny.gov/pdf/current\\_forms/st220td\\_fill\\_in.pdf](http://www.tax.ny.gov/pdf/current_forms/st220td_fill_in.pdf)

8. Bidder References: All Bidders must provide references to document that the Bidder has experience providing the Performance described in the Bid Package to entities of a similar size and character as the CNYRTA. Thus, Bidders must complete the Bidder Reference form so that the CNYRTA may investigate the Bidder's experience.

## **II. Supporting Documents**

In addition to completing and providing the forms listed above, Bidders must also submit supporting documents, including:

1. Financial Statements from Most Recent Year: All Bidders are required to submit financial statement from the most recent calendar year so that the CNYRTA, in its sole discretion, may evaluate whether the Bidder has the financial resources necessary to complete the performance described in the Invitation for Bids.
2. Equal Employment Opportunity Policy Statement: All Bidders must submit an Equal Opportunity Policy Statement with their Bid. Any Bidder who does not have such a Policy in force may review a sample statement at: <http://ocfs.ny.gov/main/forms/contracts/>
3. Supporting Documents Related to the Scope of Service and Specifications: Depending on the particular procurement, a portion of the Bid may include specific technical information, maps, drawings or similar documents. If the Invitation for Bids contains a Section III(A), please provide all documents, of whatever nature or character, set forth therein.

**B. BID FORMS WITH BID SUBMISSION CHECKLIST**

**II. FORMS TO BE COMPLETED BY ALL BIDDERS AND SUBMITTED WITH ALL BIDS**

B.

BID FORMS WITH BID SUBMISSION CHECKLIST

II.

FORMS TO BE COMPLETED BY ALL BIDDERS AND SUBMITTED WITH ALL BIDS

EXHIBIT 1

AMENDMENT AND ADDENDUM CERTIFICATION

STATE OF \_\_\_\_\_ )  
COUNTY OF \_\_\_\_\_ )ss:

I, \_\_\_\_\_, hereby affirm, under penalty of perjury, that I am \_\_\_\_\_  
(name) (title)  
of \_\_\_\_\_, referred to herein as Bidder, and that I have received, reviewed and  
(company name)  
adequately accounted for any and all information contained in the following Amendments and Addendums to  
this IFB:

☐ I have not received any Amendments or Addendums.

Amendments		Addendums	
<u>Number</u>	<u>Date</u>	<u>Number</u>	<u>Date</u>
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

Sworn to this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

\_\_\_\_\_  
(sign before a notary public)

Sworn to before me this \_\_\_\_  
day of \_\_\_\_\_, 20\_\_\_\_

\_\_\_\_\_  
Notary Public



**B. BID FORMS WITH BID SUBMISSION CHECKLIST**

**II. FORMS TO BE COMPLETED BY ALL BIDDERS AND SUBMITTED WITH ALL BIDS**

**EXHIBIT 2**

OFFICIAL TENDER FORM

**NOTICE TO POTENTIAL BIDDERS:** By submitting a Bid, Bidder agrees to and is bound by each and every term and condition set forth in the Invitation for Bids, Appendix I, Appendix II and Appendix II. Bidders assume all risks for timely, properly submitted Bids. Bids received after the Opening Date and time will be rejected and returned to the Bidder unopened. E-mail or facsimile Bids are not acceptable, will be considered non-responsive and will not be evaluated for contract award. All Bidders submit Bids entirely at their own risk and have no express or implied right to reimbursement for costs or expenses incurred in connection with preparing or submitting a Bid in response to this IFB.

The undersigned, having thoroughly reviewed the Invitation for Bids, Appendix I and Appendix II hereby proposes the following Bid Price:

<u>Description</u>	<u>Total Price</u>
Centro of Oneida Office and Break-Room construction and renovation	

**Estimated completion time from start of construction** \_\_\_\_\_

**Any additional or miscellaneous costs, expenses, or charges must be described by Bidder on Bidder's letterhead and signed by the person executing this Official Tender Form.**

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

Dated: \_\_\_\_\_ 20\_\_

By: \_\_\_\_\_

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

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

Phone: \_\_\_\_\_

Email: \_\_\_\_\_

**B. BID FORMS WITH BID SUBMISSION CHECKLIST**  
**II. FORMS TO BE COMPLETED BY ALL BIDDERS AND SUBMITTED WITH ALL BIDS**

**EXHIBIT 3**

**CERTIFICATE AND ACKNOWLEDGMENT OF AUTHORITY**

STATE OF \_\_\_\_\_ )  
COUNTY OF \_\_\_\_\_ )ss:

I, \_\_\_\_\_, hereby affirm, under penalty of perjury, that I am \_\_\_\_\_  
(name) (title)  
of \_\_\_\_\_, referred to herein as Bidder, and that I am authorized to execute and  
(company name)  
submit this Bid on behalf of Bidder.

Sworn to this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

\_\_\_\_\_  
(sign before a notary public) (title)

On the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me personally appeared \_\_\_\_\_, known to  
me to be the person who executed the foregoing instrument, who, being duly sworn by me did depose and say that \_\_he resides  
at \_\_\_\_\_, Town of \_\_\_\_\_, County of \_\_\_\_\_,  
State of \_\_\_\_\_; and further that:

[Mark an X in the appropriate box and complete the accompanying statement.]

☐ (if an individual): \_\_\_\_he executed the foregoing in his/her name and on his/her behalf.

☐ (if a corporation): \_\_\_\_he is the \_\_\_\_\_ of \_\_\_\_\_, the corporation  
described in said instrument; that by authority given by the Board of Directors of the corporation, \_\_he is authorized to execute  
the foregoing instrument on behalf of the corporation for the purposes set forth therein; and that, pursuant to such authority,  
\_\_he executed the foregoing in the name of and on behalf of the corporation as the act and deed of the corporation.

☐ (if a partnership): \_\_\_\_he is a \_\_\_\_\_ of \_\_\_\_\_, the partnership  
described in said instrument; that by the terms of said partnership, \_\_he is authorized to execute the foregoing instrument on  
behalf of the partnership for the purposes set forth therein; and that, pursuant to such authority, \_\_he executed the foregoing in  
the name of and on behalf of the partnership as the act and deed of the partnership.

☐ (if an LLC): \_\_\_\_he is a duly authorized member of \_\_\_\_\_, LLC, the limited liability  
company described in said instrument; that \_\_he is authorized to execute the foregoing instrument on behalf of the limited  
liability company for the purposes set forth therein; and that, pursuant to such authority, \_\_he executed the foregoing in the  
name of and on behalf of the limited liability company as the act and deed of the limited liability company.

Sworn to before me this \_\_\_\_  
day of \_\_\_\_\_, 20\_\_\_\_

\_\_\_\_\_  
Notary Public

**B. BID FORMS WITH BID SUBMISSION CHECKLIST**

**II. FORMS TO BE COMPLETED BY ALL BIDDERS AND SUBMITTED WITH ALL BIDS**

**EXHIBIT 4**

**NON-COLLUSIVE BIDDING CERTIFICATION**

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 to the best of his knowledge and belief:

(1) The prices in this Bid have been arrived at independently without collusion, consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other Bidder or with any competitor;

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

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

A Bid shall not be considered for award nor shall any award be made where the requirements herein have not been complied with; provided however, that if in any case the Bidder cannot make the foregoing certification, the Bidder shall so state and shall furnish with the bid a signed statement which sets forth in detail the reasons therefore.

Where the above requirements have not been complied with, the Bid shall not be considered for award nor shall any award be made unless the CNYRTA determines that such disclosure was not made for the purpose of restricting competition.

The fact that a Bidder (i) has published price lists, rates, or tariffs covering items being procured, (ii) has informed prospective customers of proposed or pending publication of new or revised price lists for such items, or (iii) has sold the same items to other customers at the same prices being Bid, does not constitute, without more, a disclosure for the purposes of this certification.

\_\_\_\_\_  
(sign before a notary public)

\_\_\_\_\_  
(title)

Sworn to before me this \_\_\_\_\_  
day of \_\_\_\_\_, 20\_\_\_\_

\_\_\_\_\_  
Notary Public

**B. BID FORMS WITH BID SUBMISSION CHECKLIST****II. FORMS TO BE COMPLETED BY ALL BIDDERS AND SUBMITTED WITH ALL BIDS****EXHIBIT 5****DISCLOSURE AND CERTIFICATION OF RESPONSIBILITY AND ELIGIBILITY****A. Disclosure of Prior Non-Responsibility Determinations**

1. Has any Governmental Entity made a finding of non-responsibility regarding the individual or entity seeking to enter into the Procurement Contract in the previous four years?  <i>If yes, please answer question 2.</i>	___ Yes	___ No
2. Was the basis for the finding of non-responsibility due to a violation of State Finance Law §139-j?  <i>If yes, please answer the question 3.</i>	___ Yes	___ No
3. Was the basis for the finding of non-responsibility due to the intentional provision of false or incomplete information to a governmental entity?	___ Yes	___ No
<i>If yes, please provide the following details regarding the non-responsibility determination:<sup>1</sup></i>		
Entity Making Non-Responsibility Determination:	_____	
Date of Non-Responsibility Determination:	_____	
Basis for Non-Responsibility Determination:	_____	
4. Has any governmental agency terminated or withheld a procurement contract with the Bidder or any of its principals due to the provision of intentional false or incomplete information?	___ Yes	___ No
<i>If yes, please provide the following details regarding the termination or withholding:<sup>2</sup></i>		
Entity Terminating or Withholding the Contract:	_____	
Date of the Termination or Withholding:	_____	
Basis for the Termination or Withholding:	_____	

**B. Ineligible Bidder Certification**

The undersigned, on behalf of Bidder, hereby certifies that it:  
(check applicable Box)

- ☐ **IS NOT** included on the United States or New York State's List of persons or firms currently debarred for violations of various public contracts incorporating labor standards provisions and worker's compensation provisions.
- ☐ **IS** included on the United States or New York State's List of persons or firms currently debarred for violations of various public contracts incorporating labor standards provisions and worker's compensation provisions.

<sup>1</sup> Please submit additional documents with your Bid as necessary.

<sup>2</sup> Please submit additional documents with your Bid as necessary.

**C. Eligibility Certification**

To the best of its knowledge, Bidder certifies that it and its principals:

- i. Are not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participating in public contracts by any governmental entity;
- ii. Have not within a three (3) year period preceding this Bid been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public contract or engaging in a public transaction; violating federal or state antitrust, embezzlement, theft, forgery, bribery of falsification statutes, rules or regulations; or has been convicted of destruction of records, making false statements, or receiving stolen property;
- iii. Are not presently indicted for or otherwise criminally or civilly charged by any government or government subdivision with commission of any of the offenses enumerated above; and
- iv. Have not within a three (3) year period preceding bid had one or more public transactions, whether federal, state or local, terminated for cause or default.

**If Bidder is unable to affirm any of the above statements under penalty of perjury, Bidder must attach an explanation for its inability to make such affirmation to this Bid.**

**BY SIGNING BELOW, BIDDER:**

- (1) Certifies and affirms the truthfulness and accuracy of the contents of the statements and responses contained on or with this form; and
- (2) Affirms that s/he understands and agrees to comply with the policy regarding permissible contacts in accordance with New York State Finance Law Sections 139-j and 139-k provided herewith in Appendix III;
- (3) Certifies and affirms that all information provided to the CNYRTA with respect to State Finance Law Sections 139-j and 139-k is complete, true and accurate.

Sworn to this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

\_\_\_\_\_  
(sign before a notary public)

\_\_\_\_\_  
(title)

\_\_\_\_\_  
Notary Public

**B. BID FORMS WITH BID SUBMISSION CHECKLIST**

**II. FORMS TO BE COMPLETED BY ALL BIDDERS AND SUBMITTED WITH ALL BIDS**  
**EXHIBIT 6**

IRANIAN ENERGY SECTOR DIVESTMENT CERTIFICATION

By signing this Bid, each person and each person signing on behalf of any other party certifies, and in the case of a joint Bid 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.

Sworn to this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

\_\_\_\_\_  
*(sign before a notary public)*

\_\_\_\_\_  
*(title)*

\_\_\_\_\_  
Notary Public

**B. BID FORMS WITH BID SUBMISSION CHECKLIST****II. FORMS TO BE COMPLETED BY ALL BIDDERS AND SUBMITTED WITH ALL BIDS****EXHIBIT 7**

New York State Department of Taxation and Finance			
<b>Contractor Certification to Covered Agency</b>			<b>ST-220-CA</b>
(Pursuant to Section 5-a of the Tax Law, as amended, effective April 26, 2006)			(12/11)
For information, consult Publication 223, <i>Questions and Answers Concerning Tax Law Section 5-a</i> (see <i>Need Help?</i> on back).			
Contractor name		For covered agency use only Contract number or description	
Contractor's principal place of business	City	State	ZIP code
Contractor's mailing address (if different than above)		Estimated contract value over the full term of contract (but not including renewals)	
Contractor's federal employer identification number (EIN)	Contractor's sales tax ID number (if different from contractor's EIN)		\$
Contractor's telephone number	Covered agency name		
Covered agency address		Covered agency telephone number	

I, \_\_\_\_\_, hereby affirm, under penalty of perjury, that I am \_\_\_\_\_  
(name) (title)

of the above-named contractor, that I am authorized to make this certification on behalf of such contractor, and I further certify that:

(Mark an X in only one box)

☐ The contractor has filed Form ST-220-TD with the Department of Taxation and Finance in connection with this contract and, to the best of contractor's knowledge, the information provided on the Form ST-220-TD, is correct and complete.

☐ The contractor has previously filed Form ST-220-TD with the Tax Department in connection with \_\_\_\_\_  
(insert contract number or description)

and, to the best of the contractor's knowledge, the information provided on that previously filed Form ST-220-TD, is correct and complete as of the current date, and thus the contractor is not required to file a new Form ST-220-TD at this time.

Sworn to this \_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_

\_\_\_\_\_  
(sign before a notary public)

\_\_\_\_\_  
(title)

**Instructions****General information**

Tax Law section 5-a was amended, effective April 26, 2006. On or after that date, in all cases where a contract is subject to Tax Law section 5-a, a contractor must file (1) Form ST-220-CA, *Contractor Certification to Covered Agency*, with a covered agency, and (2) Form ST-220-TD with the Tax Department before a contract may take effect. The circumstances when a contract is subject to section 5-a are listed in Publication 223, Q&A 3. See *Need help?* for more information on how to obtain this publication. In addition, a contractor must file a new Form ST-220-CA with a covered agency before an existing contract with such agency may be renewed.

**Note:** Form ST-220-CA must be signed by a person authorized to make the certification on behalf of the contractor, and the acknowledgement on page 2 of this form must be completed before a notary public.

**When to complete this form**

As set forth in Publication 223, a contract is subject to section 5-a, and you must make the required certification(s), if:

- The procuring entity is a *covered agency* within the meaning of the statute (see Publication 223, Q&A 5);
- The contractor is a *contractor* within the meaning of the statute (see Publication 223, Q&A 6); and
- The contract is a *contract* within the meaning of the statute. This is the case when it (a) has a value in excess of \$100,000 and (b) is a contract for *commodities or services*, as such terms are defined for purposes of the statute (see Publication 223, Q&A 8 and 9).

Furthermore, the procuring entity must have begun the solicitation to purchase on or after January 1, 2005, and the resulting contract must have been awarded, amended, extended, renewed, or assigned on or after April 26, 2006 (the effective date of the section 5-a amendments).

**Individual, Corporation, Partnership, or LLC Acknowledgment**

STATE OF : }  
COUNTY OF : }

SS.:

On the \_\_\_\_ day of \_\_\_\_\_ in the year 20\_\_\_\_, before me personally appeared \_\_\_\_\_,  
known to me to be the person who executed the foregoing instrument, who, being duly sworn by me did depose and say that  
\_he resides at \_\_\_\_\_,  
Town of \_\_\_\_\_,  
County of \_\_\_\_\_,  
State of \_\_\_\_\_; and further that:

[Mark an X in the appropriate box and complete the accompanying statement.]

- ☐ (If an individual): \_he executed the foregoing instrument in his/her name and on his/her own behalf.
- ☐ (If a corporation): \_he is the \_\_\_\_\_  
of \_\_\_\_\_, the corporation described in said instrument; that, by authority of the Board  
of Directors of said corporation, \_he is authorized to execute the foregoing instrument on behalf of the corporation for  
purposes set forth therein; and that, pursuant to that authority, \_he executed the foregoing instrument in the name of and on  
behalf of said corporation as the act and deed of said corporation.
- ☐ (If a partnership): \_he is a \_\_\_\_\_  
of \_\_\_\_\_, the partnership described in said instrument; that, by the terms of said  
partnership, \_he is authorized to execute the foregoing instrument on behalf of the partnership for purposes set forth  
therein; and that, pursuant to that authority, \_he executed the foregoing instrument in the name of and on behalf of said  
partnership as the act and deed of said partnership.
- ☐ (If a limited liability company): \_he is a duly authorized member of \_\_\_\_\_,  
LLC, the limited liability company described in said instrument; that \_he is authorized to execute the foregoing instrument  
on behalf of the limited liability company for purposes set forth therein; and that, pursuant to that authority, \_he executed  
the foregoing instrument in the name of and on behalf of said limited liability company as the act and deed of said limited  
liability company.

Notary Public

Registration No.

**Privacy notification**

The Commissioner of Taxation and Finance may collect and maintain personal information pursuant to the New York State Tax Law, including but not limited to, sections 5-a, 171, 171-a, 287, 308, 428, 475, 505, 597, 1098, 1142, and 1415 of that Law; and may require disclosure of social security numbers pursuant to 42 USC 405(c)(2)(C)(i).

This information will be used to determine and administer tax liabilities and, when authorized by law, for certain tax offset and exchange of tax information programs as well as for any other lawful purpose.

Information concerning quarterly wages paid to employees is provided to certain state agencies for purposes of fraud prevention, support enforcement, evaluation of the effectiveness of certain employment and training programs and other purposes authorized by law.

Failure to provide the required information may subject you to civil or criminal penalties, or both, under the Tax Law.

This information is maintained by the Manager of Document Management, NYS Tax Department, W A Harriman Campus, Albany NY 12227; telephone (518) 457-5181.

**Need help?**



Visit our Web site at [www.tax.ny.gov](http://www.tax.ny.gov)  
• get information and manage your taxes online  
• check for new online services and features



**Telephone assistance**

**Sales Tax Information Center:** (518) 485-2889  
To order forms and publications: (518) 457-5431

**Text Telephone (TTY) Hotline** (for persons with hearing and speech disabilities using a TTY): (518) 485-5082



**Persons with disabilities:** In compliance with the Americans with Disabilities Act, we will ensure that our lobbies, offices, meeting rooms, and other facilities are accessible to persons with disabilities. If you have questions about special accommodations for persons with disabilities, call the information center.



**B. BID FORMS WITH BID SUBMISSION CHECKLIST**  
**II. FORMS TO BE COMPLETED BY ALL BIDDERS AND SUBMITTED WITH ALL BIDS**

**EXHIBIT 8**

**BIDDER REFERENCES**

All Bidders are required to submit a list of references for current contracts involving similar Performance as described in this IFB. If the space provided is insufficient, please attach an additional page and do not alter or modify the form.

1. Company Name: \_\_\_\_\_

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

Contact Person: \_\_\_\_\_

Phone Number: \_\_\_\_\_

Contract Period: \_\_\_\_\_

Description of Performance: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_.

2. Company Name: \_\_\_\_\_

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

Contact Person: \_\_\_\_\_

Phone Number: \_\_\_\_\_

Contract Period: \_\_\_\_\_

Description of Performance: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_.

3. Company Name: \_\_\_\_\_

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

Contact Person: \_\_\_\_\_

Phone Number: \_\_\_\_\_

Contract Period: \_\_\_\_\_

Description of Performance: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_.

**C. FEDERAL CERTIFICATIONS AND FEDERAL CERTIFICATION CHECKLIST**

**I. FEDERAL CERTIFICATIONS CHECKLIST**

**NOTICE TO BIDDERS: ALL BIDS MUST INCLUDE THE FOLLOWING TO BE CONSIDERED  
RESPONSIVE:**

- The Federal Certifications Checklist (found on the next page), and
- All Certifications, as indicated on the Federal Certification Checklist, fully completed and properly executed.

## FEDERAL CERTIFICATIONS CHECKLIST

### **I. Bidder's Certifications Requirements**

To be responsive to this IFB, the CNYRTA requires all Federal Certifications marked with an "X" in the left blank next to each Certification listed below as part of any Bid ("Required Federal Certifications").

Bidders must complete and execute each Required Federal Certification and indicate that it is included with the Bid by placing an "X" in the right blank next to each Required Federal Certification.

For some procurements, the Selected Bidder is obligated to provide additional certifications, reports or supporting documents during the course of Performance. For all procurements, the Selected Bidder is obligated to cooperate with the CNYRTA and provide additional certifications, reports or supporting documents during the course of Performance and in connection with Contract Closeout. Therefore, by submitting a Bid, the Selected Bidder agrees:

(a) to provide any and all necessary supporting documents, post delivery certifications and compliance reports as indicated below or which are otherwise required by federal law or regulation promptly upon the CNYRTA's written request; and

(b) to fully, completely and timely cooperate with the CNYRTA such that the CNYRTA is able to satisfy its reporting or compliance requirements.

### **II. Required Federal Certifications**

#### **A. All Procurements**

[XX\_] F1. \_\_\_ Disadvantaged Business Enterprise Certification

#### **B. All Procurements Exceeding \$25,000.00**

[XX\_] F2. \_\_\_ Suspension and Debarment Certification

#### **C. All Procurements Exceeding \$100,000.00**

[XX\_] F3. \_\_\_ Lobbying Certification and Disclosure

#### **D. Construction Contracts and Procurements of Steel, Iron or Manufactured Products Exceeding \$100,000.00**

[XX\_] F4. \_\_\_ Buy America Certification

#### **E. Procurements Involving New Building Construction or Addition(s) to Existing Buildings**

[NA\_] F5. \_\_\_ Seismic Safety Certification

#### **F. Procurements Involving Transportation of Persons or Property**

By submitting a Bid, the Successful Bidder agrees:

- (a) to review the regulations respecting transportation of cargo by ocean vessel and international air travel;
- (b) advise the CNYRTA in writing if it anticipates either set of regulations will apply to any aspect of the Performance; and
- (c) if such regulations apply, to provide the CNYRTA with the Certifications described below.

#### **\* Cargo Preference Certification:**

- Where the Performance involves transportation of property by ocean vessel, the Selected Bidder must provide the Certifications and supporting documents described in paragraph 17 of the Federal Transit Administration Contract Clauses within the time prescribed.

***\* Use of United States Air Carriers:***

- Where the Performance international air travel, the Selected Bidder must provide a Certification that (a) such travel was by a United States Flag Air Carrier, or (b) that it was necessary to travel by a foreign Air Carrier. In both cases, the Certification must include the following information:
  - The Selected Bidder's name;
  - The name of the travel;
  - The dates of the travel;
  - The origin and destination of the travel;
  - A detailed itinerary of the travel, name of the air carrier and flight number for each leg of the travel; and
  - A statement explaining why an exception to the Fly America requirement applied, or a copy of the CNYRTA's written approval that foreign air carrier service was deemed a matter of necessity in accordance with 41 C.F.R. 301-10.138.

DISADVANTAGED BUSINESS ENTERPRISE CERTIFICATION

Pursuant to the requirements of 49 C.F.R. Part 26 regarding the participation of disadvantaged business enterprises (“DBEs”) in FTA contracts, the Bidder certifies that:

XX [There are no subcontracting opportunities in this procurement; and therefore, there is no DBE goal for this contract and Bidder is not required to submit this Certification. ]

☐ There are subcontracting opportunities in this procurement and Bidder certifies its Bid satisfies CNYRTA’s aspirational two percent (2%) goal for DBE participation as set forth in the Bid Package and has documented commitments from DBE firms identified below; or

☐ There are subcontracting opportunities in this procurement and Bidder made a good faith effort to meet the aspirational two percent (2%) goal for DBE participation, took all necessary and reasonable steps to satisfy the goal, which by their scope, intensity and appropriateness, could reasonably be expected to result in two percent (2%) DBE participation even if they were unsuccessful.

In any event, the Bidder certifies that if it is the Selected Bidder, it will not discriminate on the basis of race, color, national origin or gender in completing the Performance described in Section III and will carry out all applicable requirements of 49 C.F.R. Part 26 in connection therewith.

The Bidder hereby agrees to monitor the certification status of those firms whose contributions to the Performance it intends to use in order to satisfy the DBE participation goal and to notify the CNYRTA in writing immediately upon any change in such firm’s certification status.

The Bidder acknowledges that failure to carry out DBE participation requirements is a material breach of this contract and may result in termination or such other remedy as the CNYRTA may deem appropriate.

Commitment to Participate in Performance		Efforts to Satisfy Participation Goal
Firm Name	DBE Certification No.	Description of Efforts
1.		1.
2.		2.
3.		3.

*\*if additional space to identify DBE Firms which will or may participate in the Performance or to describe your efforts to satisfy the DBE participation goal is necessary, please attach additional pages.*

The undersigned Bidder hereby certifies that it has complied with the provisions of 49 C.F.R. Part 26, and that the person signing on behalf of the Bidder is an individual duly authorized to make such certification on its behalf.

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

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

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

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

**SUSPENSION AND DEBARMENT CERTIFICATION**

By signing and submitting its Bid, the Bidder certifies as follows:

The Bidder hereby certifies that the it, its principals and its affiliates, if any, are not excluded or disqualified to participate in federal procurement contracts, agrees to comply with the requirements of 2 C.F.R. Part 1200, Subpart C at all times during the Bid evaluation process and throughout Performance if it is the Selected Bidder, and will include a provision requiring compliance with the same in all lower tier covered transactions.

This Certification is a material representation of fact relied upon by the CNYRTA. If it is later determined that the Bidder knowingly rendered an erroneous Certification, in addition to remedies available to the CNYRTA, the Federal Government may also pursue the remedies available to it, including but not limited to suspension and/or debarment.

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

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

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

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

LOBBYING CERTIFICATION AND DISCLOSURE

The undersigned Bidder certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement and the extension, continuation, renewal, amendment or modification of any Federal contract, grant, loan or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan or cooperative agreement, the undersigned shall complete and submit Standard Form--LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions as amended by "Government wide Guidance for New Restrictions on Lobbying" 61 Fed. Reg. 1413 (1/19/96).<sup>8</sup>

(3) The undersigned shall require that the language of this Certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants and contracts under grants, loans and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Pursuant to 31 U.S.C. § 1352(c)(1)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure or failure.

The Bidder hereby certifies the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Bidder understands and agrees that the provisions of 31 U.S.C. A 3801, *et seq.*, apply to this certification and disclosure, if any.

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

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

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

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

---

<sup>8</sup> Note: Language in paragraph (2) herein has been modified in accordance with Section 10 of the Lobbying Disclosure Act of 1995 (P.L. 104-65, to be codified at 2 U.S.C. 1601, *et seq.*).

BUY AMERICA CERTIFICATION

**Certify to Compliance or Non-compliance with Buy America. No certification or signing both will deem the bid non-responsive**

*Certificate of **Compliance** with 49 U.S.C. 5323(j)(1)*

Bidder hereby certifies that it will meet the requirements of 49 U.S.C. 5323(j)(1) and the applicable regulations in 49 CFR Part 661.5.

DATE\_\_\_\_\_

SIGNATURE\_\_\_\_\_

COMPANY NAME\_\_\_\_\_

TITLE: \_\_\_\_\_

*Certificate of **Non-Compliance** with 49 U.S.C. 5323(j)(1)*

Bidder hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323(j)(1) and 49 C.F.R. 661.5, but it may qualify for an exception pursuant to 49 U.S.C. 5323(j)(2)(A), 5323(j)(2)(B), or 5323(j)(2)(D), and 49 C.F.R. 661.7.

DATE\_\_\_\_\_

SIGNATURE\_\_\_\_\_

COMPANY NAME\_\_\_\_\_

TITLE: \_\_\_\_\_



## **D. APPENDICES**

### **I. NEW YORK STATE STANDARD CONTRACT CLAUSES**

**APPENDIX I**  
**NEW YORK STATE STANDARD CONTRACT CLAUSES**

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

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

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

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

contract established as a centralized contract through the Office of General Services or for a purchase order or other transaction issued under such centralized contract.

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

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

6. **WAGE & HOURS PROVISIONS.** If this is a public work contract covered by Article 8 of the Labor Law or a building service contract covered by Article 9 thereof, neither Contractor's employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days

stated in said statutes, except as otherwise provided in the Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, Contractor and its subcontractors must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as determined by the State Labor Department in accordance with the Labor Law. Additionally, effective April 28, 2008, if this is a public work contract covered by Article 8 of the Labor Law, the Contractor understands and agrees that the filing of payrolls in a manner consistent with Subdivision 3-a of Section 220 of the Labor Law shall be a condition precedent to payment by the State of any State approved sums due and owing for work done upon the project.

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

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

9. **SET-OFF RIGHTS.** The State shall have all of its common law, equitable and statutory rights of set-off. These rights shall include, but not be limited to, the State's option to withhold for the purposes of set-off any moneys due to the

Contractor under this contract up to any amounts due and owing to the State with regard to this contract, any other contract with any State department or agency, including any contract for a term commencing prior to the term of this contract, plus any amounts due and owing to the State for any other reason including, without limitation, tax delinquencies, fee delinquencies or monetary penalties relative thereto. The State shall exercise its set-off rights in accordance with normal State practices including, in cases of set-off pursuant to an audit, the finalization of such audit by the State agency, its representatives, or the State Comptroller.

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

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

number or numbers, the payee, on its invoice or Claim for Payment, must give the reason or reasons why the payee does not have such number or numbers.

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

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

(a) The Contractor will not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability or marital status, shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force on State contracts and will undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination. Affirmative action shall mean recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation;

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

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

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

and Women's Business Development pertaining hereto.

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

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

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

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

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

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

In addition, when any portion of this contract involving the use of woods, whether supply or installation, is to be performed by any subcontractor, the prime Contractor will indicate

and certify in the submitted bid proposal that the subcontractor has been informed and is in compliance with specifications and provisions regarding use of tropical hardwoods as detailed in §165 State Finance Law. Any such use must meet with the approval of the State; otherwise, the bid may not be considered responsive. Under bidder certifications, proof of qualification for exemption will be the responsibility of the Contractor to meet with the approval of the State.

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

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

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

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

A directory of certified minority and women-owned business enterprises is available from: NYS Department of Economic Development; Division of Minority and Women's Business Development:  
633 Third Avenue  
New York, NY 10017  
212-803-2414  
email: mwbecertification@esd.ny.gov  
<http://esd.ny.gov/MWBE/directorySearch.html>  
The Omnibus Procurement Act of 1992 requires that by signing this bid proposal or contract, as applicable, Contractors certify that whenever the total bid amount is greater than \$1 million:

(a) The Contractor has made reasonable efforts to encourage the participation of New York State Business Enterprises as suppliers and subcontractors, including certified minority and

women-owned business enterprises, on this project, and has retained the documentation of these efforts to be provided upon request to the State;

(b) The Contractor has complied with the Federal Equal Opportunity Act of 1972 (P.L. 92-261), as amended;

(c) The Contractor agrees to make reasonable efforts to provide notification to New York State residents of employment opportunities on this project through listing any such positions with the Job Service Division of the New York State Department of Labor, or providing such notification in such manner as is consistent with existing collective bargaining contracts or agreements. The Contractor agrees to document these efforts and to provide said documentation to the State upon request; and

(d) The Contractor acknowledges notice that the State may seek to obtain offset credits from foreign countries as a result of this contract and agrees to cooperate with the State in these efforts.

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

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

**23. COMPLIANCE WITH CONSULTANT DISCLOSURE LAW.** If this is a contract for consulting services, defined for purposes of this requirement to include analysis, evaluation, research, training, data processing, computer programming, engineering, environmental, health, and mental health services, accounting,

auditing, paralegal, legal or similar services, then, in accordance with Section 163 (4-g) of the State Finance Law (as amended by Chapter 10 of the Laws of 2006), the Contractor shall timely, accurately and properly comply with the requirement to submit an annual employment report for the contract to the agency that awarded the contract, the Department of Civil Service and the State Comptroller.

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

**25. CERTIFICATION OF REGISTRATION TO COLLECT SALES AND COMPENSATING USE TAX BY CERTAIN STATE CONTRACTORS, AFFILIATES AND SUBCONTRACTORS.**

To the extent this agreement is a contract as defined by Tax Law Section 5-a, if the contractor fails to make the certification required by Tax Law Section 5-a or if during the term of the contract, the Department of Taxation and Finance or the covered agency, as defined by Tax Law 5-a, discovers that the certification, made under penalty of perjury, is false, then such failure to file or false certification shall be a material breach of this contract and this contract may be terminated, by providing written notification to the Contractor in accordance with the terms of the agreement, if the covered agency determines that such action is in the best interest of the State.

**Other New York State Requirements**

**26. QUALIFICATION TO CONTRACT:** Any person who, when called before a grand jury, head of a State Department, temporary State commission or other State Agency, the Organized Crime Task Force in the Department of Law, head of a City Department or other city agency, which is empowered to compel the attendance of witnesses and examine them under oath, to testify in an investigation concerning any transaction or contract had with New York State, any political subdivision thereof, a public authority, or with a public department, agency or official of the State or of any political

subdivision thereof or of a public authority, refuses to sign a waiver of immunity against subsequent criminal prosecution or to answer any relevant question concerning such transaction or contract, and any firm, partnership or corporation of which he or she is a member, partner, director or officer shall be disqualified thereafter from selling to or submitting Bids to or receiving awards from or entering into any contracts with any municipal corporation or fire district, or with any public department, agency or official thereof, for goods, work or services, for a period of five (5) years after such refusal or until a disqualification shall be removed pursuant to the provisions of Section 103-C of the New York State General Municipal Law.

**27. GROUNDS FOR DISQUALIFICATION:** Upon the refusal of a person, when called before a grand jury, head of a Municipal Department, or other Municipal Agency, which is empowered to compel the attendance of witnesses and examine them under oath, to testify in an investigation concerning any transaction or contract had with the State of New York, any political subdivision thereof, a public authority or with any public department, agency or official of the State or any political subdivision thereof or of a public authority, to sign a waiver of immunity against subsequent criminal prosecution or to answer any relevant question concerning such transaction or contract: (i) Such person and any firm, partnership or corporation of which he is a member, partner, director or officer shall be disqualified from thereafter selling to or submitting Bids to or receiving awards from or entering into contracts with any municipal corporation or fire district, or any public department, agency or official thereof, or with the CNYRTA for goods, work or services, for a period of five (5) years after such refusal; and (ii) any and all contracts made with any municipal or public benefit corporation or any public department, agency or official thereof on or after the first day of July, 1959 or with any fire district or any agency or official thereof on or after the first day of September, 1960, by such person, and by any firm, partnership, or corporation of which he is a member, partner, director or officer may be canceled or terminated by the municipal corporation or fire district or such public benefit corporation without incurring any penalty or damages on account of such cancellation or termination, but any moneys owing by the municipal corporation or fire district for goods delivered or work done prior to the cancellation or termination shall be paid.

**28. WAIVER OF IMMUNITY:** By submitting a bid, the Bidder represents that it has never at any time refused to sign a waiver of immunity against subsequent criminal prosecution or to answer any relevant question concerning any

transaction or contract had with the State of New York, any political subdivision thereof or of a public authority, nor has any firm, partnership or corporation of which the Contractor is a member, partner, director or officer so refused to sign a waiver of immunity, under the language and intention of Section 103-b of the General Municipal Law of the State of New York.

The Bidder agrees as a further condition that should the Bidder, if an individual, or any partner thereof (if a partnership), or any director or officer thereof (if a corporation), or any member, manager or officer thereof (if a limited liability company), refuse (when called before a grand jury to testify concerning any transaction or contract had with the State, any political subdivision thereof, a public authority) to sign a waiver of immunity against any subsequent criminal prosecution or to answer any relevant question concerning such transaction or contract, and in such event, any such person, partner, director or officer shall be disqualified from thereafter selling to or submitting bids to or receiving awards from or entering into any contracts with any municipal corporation, or any public department, agency or official thereof for goods, work or services for a period of five (5) years after such refusal and further that any and all contracts made with the CNYRTA on and after the first day of July, 1959, by such person and by any firm, partnership or corporation of which he or she is a member, partner, director or officer, may be canceled or terminated by CNYRTA and upon such cancellation or termination the CNYRTA shall not be liable for any penalty or damages on account of such cancellation or termination except than any moneys due by the CNYRTA for goods delivered and work or services rendered prior to the cancellation or termination shall be paid to the Bidder.

The Bidder specifically agrees to the provisions of section 2875 of the New York State Public Authorities Law which requires that upon the refusal of a person, when called before a grand jury, head of State Department, temporary State Commission, or other State agency, or the Organized Crime Task Force in the Department of Law, head of city department, or other city agency which is empowered to complete the attendance of witnesses and examine them under oath, to testify in an investigation concerning any transaction or contract had with the State, any political subdivision thereof or of a public authority to sign a waiver of immunity against subsequent criminal prosecution or to answer any relevant questions concerning such transaction or contract, such person, and any firm, partnership or corporation of which it is a member, partner, director or officer shall be disqualified from thereafter selling to or

submitting Bids to or receiving awards from or entering into any contracts with any public authority or official for goods, work or services, for a period of five (5) years after such refusal.

Ringlemann Scale thereafter. Nothing herein shall limit CNYRTA to higher requirements in its specifications should it so desire.

**29. DISQUALIFICATION TO CONTRACT WITH STATE:** Any person who, when called before a grand jury, head of a New York State Department, temporary State Commission or other State agency, or the Organized Crime Task Force in the Department of Law, which is empowered to compel the attendance of witnesses and examine them under oath, to testify in an investigation, concerning any transaction or contract had with the State, any political subdivision thereof, a public authority or with a public department, agency or official of the State or of any political subdivision thereof or of a public authority, refuses to sign a waiver of immunity against subsequent criminal prosecution or to answer any relevant question concerning such transaction or contract, any firm, partnership or corporation of which he is a member, partner, director or officer, shall be disqualified from thereafter selling to or submitting Bids to or receiving awards from or entering into any contracts with the State or any public department, agency, or official thereof, for goods, work or services, for a period of five (5) years after such refusal or until disqualification shall be removed pursuant to the provisions of Section 139-C of the New York State Finance Law.

**30. MOTOR VEHICLE SAFETY STANDARDS:** Any vehicle will comply with the Motor Vehicle Safety Standards as established, amended and modified by the New York State or United States Department of Transportation. Nothing herein shall limit CNYRTA to higher requirements in its specifications should it so desire.

**31. MOTOR VEHICLE POLLUTION REQUIREMENTS:** If the purchase of a motor vehicle is contemplated, the Successful Bidder will prove to the CNYRTA in writing that: (i) the horsepower of the vehicle is adequate for the speed range and terrain in which it will be required to operate and also to meet the demands of all auxiliary power equipment, (ii) all gases and vapors emanating from the crankcase of a spark-ignition engine are controlled to minimize their escape into the atmosphere, (iii) visible emission from the exhaust will not exceed #1 on the Ringlemann Scale when measured six inches (6") from the tailpipe with vehicle in steady operation, and (iv) when the vehicle has been idled for three (3) minutes and then accelerated to eighty percent (80%) of rated speed under load, the capacity of the exhaust will not exceed #2 on the Ringlemann Scale for more than five (5) seconds, and not more than #1 on the

## D. APPENDICES

### II. FEDERAL TRANSIT ADMINISTRATION CONTRACT CLAUSES AND PROTEST PROCEDURE

#### Appendix II Federal Transit Administration Contract Clauses

For the purposes of this Appendix, the term “Contractor” is used to identify Bidders, including the Successful Bidder, and Proposers, including the Successful Proposer, as the case may be for this particular procurement.

**DISCLAIMER:** The Contractor is hereby placed on notice that CNYRTA receives funding from the Federal Government by way of grants from the Federal Transit Administration (“FTA”). As a condition of receiving such grants, the CNYRTA is obligated to comply various Federal laws and regulations, as well as with all applicable provisions of a Master Agreement between the FTA and its grant recipients. All applicable provisions of the Master Agreement are, where not otherwise provided for, hereby incorporated by reference herein. Contractors may obtain a copy of the Master Agreement, as may be amended from time to time, from the FTA’s website: <http://www.fta.dot.gov/documents/19-Master.pdf>.

#### Applicable to all FTA-Assisted Third Party Contracts

**1. No Federal Government Obligation to Third Parties.** The CNYRTA and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or contract award, absent the express written consent by the Federal Government, the Federal Government is not a party to the Contract and shall not be subject to any obligations or liabilities to the CNYRTA, the Contractor or any other party (whether or not a party to that contract) pertaining to any matter resulting from the Contract. The Contractor further agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA, and that such clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

**2. False or Fraudulent Statements or Claims – Civil and Criminal Fraud.** The following provisions relate to program fraud and false or fraudulent statements or related acts:

(a) The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. §§ 3801 et seq. and U.S. DOT regulations, “Program Fraud Civil Remedies,” 49 C.F.R. Part 31, apply to its actions pertaining to this Contract. Upon contract award, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, makes, may make or causes to be made, pertaining to the

underlying Contract or the FTA assisted project for which the Performance is rendered. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes or causes to be made a false, fictitious, or fraudulent claim, statement, submission or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate;

(b) the Contractor acknowledges that if it makes or causes to be made a false, fictitious, or fraudulent claim, statement, submission or certification to the Federal Government under a contract connected with a project financed in whole or in part with Federal assistance originally awarded by the FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Contractor to the extent the Federal Government deems appropriate; and

(c) the Contractor agrees to include the above two clauses without modification, except to identify the subcontractor who will be subject to the provisions, in each subcontract financed in whole or in part with Federal assistance provided by the FTA.

**3. Access to Third Party Contract Records.** The following access to records requirements apply to this Contract, but need not be reproduced in any subcontracts:

(a) Where the Purchaser is not a State but a local government and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C. F. R. 18.36(i), the

Contractor agrees to provide the purchaser, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to the Contract for the purposes of making audits, examinations, excerpts and transcriptions. The Contractor also agrees, pursuant to 49 C. F. R. 633.17, to provide the FTA Administrator or his authorized representatives, including any PMO Contractor, access to Contractor’s records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311.

(b) Where the Purchaser is a State and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C.F.R. 633.17, the Contractor agrees to provide the Purchaser, the FTA Administrator or his authorized representatives, including any PMO Contractor, access to the Contractor’s records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311. By definition, a major capital project excludes contracts of less than the simplified acquisition threshold currently set at \$100,000.

(c) Where the Purchaser enters into a negotiated contract for other than a small purchase or under the simplified acquisition threshold and is an institution of higher education, a hospital or other non-profit organization and is the FTA Recipient or a



subgrantee of the FTA Recipient in accordance with 49 C.F.R. 19.48, the Contractor agrees to provide the Purchaser, FTA Administrator, the Comptroller General of the United States, or any of their duly authorized representatives with access to any books, documents, papers and record of the Contractor which are directly pertinent to the Contract for the purposes of making audits, examinations, excerpts and transcriptions.

(d) Where any Purchaser which is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 U.S.C. 5325(a) enters into a contract for a capital project or improvement (defined at 49 U.S.C. 5302(a)1) through other than competitive bidding, the Contractor shall make available records related to the Contract to the Purchaser, the Secretary of Transportation and the Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.

(e) The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

(f) The Contractor agrees to maintain all books, records, accounts and reports required by the Contract for a period of not less than three years after the date of termination or expiration of the Contract, except in the event of litigation or settlement of claims arising from Performance, in which case the Contractor agrees to maintain same until the Purchaser, the FTA Administrator, the Comptroller General or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto.

**4. Changes to Federal Requirements.** The Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between the CNYRTA and the FTA, as they may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of the Contract. The Master Agreement is available as indicated in the Notice and Disclaimer preceding the clauses herein.

**5. Civil Rights; Equal Employment Opportunity, Title VI and Americans with Disabilities Act.** The following requirements apply to the Contract, and must be included in any subcontract financed in whole or in part with assistance provided by

the FTA without modification, except to identify the subcontractor:

(a) **Nondiscrimination.** In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal Transit Law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability, and agrees to comply with applicable implementing regulations and requirements the FTA may issue.

(b) **Equal Employment Opportunity.** The following equal employment opportunity requirements apply to the Contract:

(1) **Race, Color, Creed, National Origin, Sex.** In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal Transit Laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable Equal Employment Opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 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," 42 U.S.C. § 2000e note) and with any applicable federal statutes, executive orders, rules, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of Performance. The Contractor agrees to take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation and selection for training, including apprenticeship. The Contractor agrees to comply with any implementing regulations and requirements the FTA may issue.

(2) **Age.** In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. §§ 623 and Federal Transit Law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age, and agrees to comply with any implementing

regulations and requirements the FTA may issue.

(3) **Disabilities.** In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will 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 C.F.R. Part 1630, pertaining to employment of persons with disabilities, and to comply with any implementing regulations and requirements the FTA may issue.

#### **6. Disadvantaged Business Enterprises.**

(a) This contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, *Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs*. The CNYRTA's goal for participation of Disadvantaged Business Enterprises (DBE) in FTA assisted contracts is an aspirational 2 percent of the overall contract price. A separate contract goal has not been established for this procurement unless so stated in the specifications or scope of performance.

(b) The contractor, sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate.

(c) If a separate contract goal has been set in the specifications/scope of performance, Contractors are required to document sufficient DBE participation to meet such goals or, alternatively, document adequate good faith efforts to do so as provided for in 49 C.F.R. 26.53.

To the extent DBE requirements apply, award of this contract is conditioned on submission of the following information concurrent with Bid or Proposal Submission:

1. The names and addresses of DBE firms that will participate in the Contract;

2. A description of the work each DBE will perform;

3. The dollar amount of the participation of each DBE firm participating;

4. Written documentation of the Contractor's commitment to use a DBE subcontractor whose participation it submits to meet the Contract goal;

5. Written confirmation from the DBE that it is participating in the Contract as provided in the Contractor's commitment; and

6. If the Contract goal is not met, evidence of good faith efforts to do so. Contractors must present the information required above as a matter of responsiveness with Bid or Proposal Submissions (*see* 49 C.F.R. 26.53(3)).

If no separate contract goal is established, the Contractor is required to report its DBE participation obtained through race-neutral means throughout the period of Performance.

(d) The Contractor is required to pay its subcontractors performing work related to this Contract for satisfactory Performance of that work no later than 30 days after the Contractor's receipt of payment for that work from the CNYRTA. In addition, the Contractor may not hold retainage from its subcontractors; is required to return any retainage payments to those subcontractors within 30 days after the subcontractor's work related to this contract is satisfactorily completed; is required to return any retainage payments to those subcontractors within 30 days after incremental acceptance of the subcontractor's work by the CNYRTA and contractor's receipt of the partial retainage payment related to the subcontractor's work as the case may be based on the scope and nature of the Contract.

(e) The Contractor must promptly notify the CNYRTA whenever a DBE subcontractor participating in Performance is terminated or fails to perform and must make good faith efforts to engage another DBE subcontractor to complete at least the same amount of the work. The Contractor may not terminate any DBE subcontractor and perform that work through its own forces, or those of an affiliate, without prior written consent of the CNYRTA.

**7. Incorporation of Federal Transit Administration Terms.** The provisions and clauses herein include, in part, certain Standard Terms and Conditions required by Department of Transportation ("DOT"), whether or not expressly set forth. All contractual provisions required by DOT, as set forth in the FTA Circular 4220.1E are hereby incorporated by reference as if fully reproduced herein. Notwithstanding anything to the contrary, all FTA mandated terms shall be deemed to control in the event

of a conflict with other provisions contained in the Contract. The Contractor shall not perform any act, fail to perform any act or refuse to comply with any CNYRTA request which would cause the CNYRTA to be in violation of the FTA terms and conditions.

**8. Energy Conservation.** The Contractor agrees to comply with mandatory standards and policies relating to energy efficiency contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

**Applicable to All Contracts Exceeding \$10,000.00**

**9. Termination.** The following clauses relate to termination of the rights and obligations of the Contract:

(a) Termination for Convenience. The CNYRTA may terminate this Contract, in whole or in part, at any time by written notice to the Contractor when it is in the Government's best interest. The Contractor shall be paid its costs, including contract close-out costs, and profit on work performed up to the time of termination. The Contractor shall promptly submit its termination claim to the CNYRTA for payment due the Contractor under the provisions herein. If the Contractor has any property in its possession belonging to the CNYRTA, the Contractor will account for the same and dispose of it in the manner directed by the CNYRTA.

(b) Termination for Default, Breach or Cause. If the Contractor does not render Performance in accordance with the Contract or fails to comply with any provisions therein, the CNYRTA may terminate the Contract for default. Termination shall be effected by serving a notice of termination on the Contractor setting forth the manner in which the Contractor is in default. The Contractor will only be paid the contract price for Performance rendered and acceptable.

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

(d) Waiver of Remedies for any Breach. In the event the CNYRTA elects to waive its remedies for any breach by Contractor of any covenant, term or condition of this Contract, such waiver by the CNYRTA shall not limit the CNYRTA's remedies for any

succeeding breach of that or of any other term, covenant, or condition of the Contract.

**Applicable to All Contracts Exceeding \$25,000.00**

**10. Suspension and Debarment.** This Contract is a covered transaction for purposes of 49 C.F.R. Part 29. As such, the Contractor is required to verify that the Contractor, its principals, as defined at 49 C.F.R. 29.995, or affiliates, as defined at 49 C.F.R. 29.905, are not excluded or disqualified as defined at 49 C.F.R. 29.940 and 29.945. The Contractor is required to comply with 49 C.F.R. 29, Subpart C and must include the requirement to comply with 49 C.F.R. 29, Subpart C in any lower tier covered transaction it enters into.

**Applicable to All Contracts Exceeding the Current Simplified Acquisition Threshold (\$100,000.00)**

**11. Breach and Dispute Resolution.** The following provisions relate to breached of the Contract and Dispute Resolution procedures:

(a) Disputes Arising During Performance. Disputes arising during Performance that are not resolved by agreement of the parties shall be decided in writing by the authorized representative of the CNYRTA's Executive Director. This decision shall be final and conclusive, unless within ten (10) days from the date of receipt of the decision, the Contractor mails or otherwise furnishes a written appeal to the Executive Director. In connection with any appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the Executive Director shall be binding upon the Contractor and the Contractor shall abide by the decision.

(b) Performance During Dispute. Unless otherwise directed by the CNYRTA, the Contractor shall continue Performance while matters in dispute are being resolved.

(c) Claims for Damages. Should either party to the Contract suffer injury or damage to person or property because of any act or omission of the other party, or of any of his/her/its employees, agents or those whose acts he/she/it is legally liable for, a claim for damages shall be made in writing to such other party within a reasonable time after the first observance of such injury or damage.

(d) Remedies. Unless the Contract provides otherwise, all claims, counterclaims, disputes and other matters in question between the CNYRTA and the Contractor arising out of or relating to this agreement or

its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the State of New York venue in Onondaga County.

(e) Rights and Remedies. The duties and obligations imposed by the Contract and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the CNYRTA or Contractor shall constitute a waiver of any right or duty afforded them under the Contract, nor shall such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

**12. Buy America Requirements.** Where the contract value exceeds the Simplified Acquisition Threshold and when performance thereunder involves construction or acquisition of tangible property, the Contractor agrees to comply with 49 U.S.C. 5323(j) and 49 C.F.R. Part 661, which provide that federal funds may not be obligated unless steel, iron, and manufactured products used in FTA-funded projects are produced in the United States unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are applicable to those products listed in 49 C.F.R. 661.7, final assembly in the United States for 15 passenger vans and 15 passenger wagons produced by Chrysler Corporation, microcomputer equipment and software. Separate requirements for rolling stock are set out at 49 U.S.C. 5323(j)(2)(C) and 49 C.F.R. 661.11. Rolling stock must be assembled in the United States and have a 60 percent domestic content.

**Applicable to All Contracts Exceeding \$100,000.00 by Statute**

**13. Lobbying.** Contractors who submit a Proposal or Bid, as the case may be, for an award of \$100,000 or more shall file the certification required by 49 C.F.R. Part 20, "New Restrictions on Lobbying." Each tier of Contractor must certify to the tier above that it will not use and has not used federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, member of Congress, officer or employee of Congress or an employee of a member of Congress in connection with obtaining any federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure

Act of 1995 who has made lobbying contacts on its behalf using non-federal funds with respect to that federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures must be forwarded from tier to tier until they reach the CNYRTA.

**14. Clean Air.** The Contractor agrees to:

- (a) comply with all applicable standards, orders and regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 *et seq.*;
- (b) report every violation thereof to the CNYRTA and understands and agrees that the CNYRTA will, in turn, report every violation as required to assure notification to the FTA and the appropriate EPA Regional Office; and
- (c) include these requirements in each subcontract exceeding \$100,000.00 funded in whole or in part with federal assistance provided by the FTA.

**15. Clean Water.** The Contractor agrees to:

- (a) comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 *et seq.*;
- (b) report every violation thereof to the CNYRTA and understands and agrees that the CNYRTA will, in turn, report every violation thereof to assure notification to FTA and the appropriate EPA Regional Office; and
- (c) include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by the FTA.

**Applicable to All Contracts Involving Acquisition of Items Designated by the Environmental Protection Agency Exceeding \$10,000.00**

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

**Applicable to All Contracts Involving Transportation of Persons or Property**

**17. Cargo Preference Requirements; Use of United States-Flag Vessels.** Where the FTA assisted contract involves the transport of property suitable for shipment by ocean vessel, the Contractor agrees to:

- (a) use privately owned United States-Flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers), when shipping any equipment, material or commodities pursuant to the Contract to the extent such vessels are available at fair and reasonable rates;
- (b) furnish within 20 business days following the date of loading for shipments originating within the United States or within 30 business days following the date of loading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in the preceding paragraph to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to the CNYRTA (or to the Contractor in the case of a subcontractor's bill-of-lading); and
- (c) include these requirements in all subcontracts made in connection with the Contract when the subcontract may involve the transport of equipment, material or commodities by ocean vessel.

**18. Fly America Requirements.** Where the FTA assisted contract involves international air transportation for persons or property, the Contractor agrees to comply with 49 U.S.C. 40118 (the "Fly America" Act) in accordance with the General Services Administration's regulations at 41 C.F.R. Part 301-10, which provide that recipients and subrecipients of federal funds and their contractors are required to use U.S. Flag air carriers for U.S. Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. The Contractor shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a U.S. Flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. The Contractor agrees to include the requirements of this section in all subcontracts that may involve international air transportation.

**Applicable to Contracts Involving Construction and Non-Construction Activities**

**19. Contract Work Hours and Safety Standards.** The following provisions apply to work hours and safety standards:

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

(b) Violation; Liability for Unpaid Wages; Liquidated Damages. In the event of any violation of the clause set forth in paragraph (a) of this section the Contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States for liquidated damages which shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (a) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required herein.

(c) Withholding for Unpaid Wages and Liquidated Damages. The CNYRTA 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 the Contractor or subcontractor under any such contract or any other federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined as necessary to satisfy any liabilities of the Contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b) of this section.

(d) Subcontracts. The Contractor or subcontractor shall insert all clauses in this section in any subcontracts, as well as a clause requiring subcontractors to include the same in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (a) through (d) of this section.

**20. Davis-Bacon and Copeland Anti-Kickback Acts.**

(a) Minimum wages.

(1) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 C.F.R. part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 C.F.R. Part 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein, provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed and the wage determination (including any additional classifications and wage rates conformed under this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(2)(i) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be

classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met: (i) except with respect to helpers as defined as 29 C.F.R. 5.2(n)(4), the work to be performed by the classification requested is not performed by a classification in the wage determination; and (ii) the classification is utilized in the area by the construction industry; and (iii) the proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination; and (iv) with respect to helpers as defined in 29 C.F.R. 5.2(n)(4), such a classification prevails in the area in which the work is performed.

(2)(ii) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(2)(iii) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(2)(iv) The wage rate (including fringe benefits where appropriate) determined pursuant to this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(3) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(4) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, provided that the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(5)(i) The contracting officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met: (1) the work to be performed by the classification requested is not performed by a classification in the wage determination; and (2) the classification is utilized in the area by the construction industry; and (3) the proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(5)(ii) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(5)(iii) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on

the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(5)(iv) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(v) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

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

(c) Payrolls and basic records.

(1) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of

wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 C.F.R. 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(2)(i) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the CNYRTA for transmission to the Federal Transit Administration. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under section 5.5(a)(3)(i) of Regulations, 29 C.F.R. part 5. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-00014-1), U.S. Government Printing Office, Washington, DC 20402. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors.

(2)(ii) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following: (A) that the payroll for the payroll period contains the information required to be maintained under section 5.5(a)(3)(i) of Regulations, 29 C.F.R. part 5 and that such information is correct and complete; (B) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly

or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 C.F.R. part 3; (C) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(2)(iii) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by this section.

(2)(iv) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

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

(1) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment

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

(2) Trainees. Except as provided in 29 C.F.R. 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan

approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(3) Equal Employment Opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 C.F.R. part 30.

(e) Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 C.F.R. part 3, which are incorporated by reference in this contract.

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

(g) Contract Termination and Debarment. A breach of the contract clauses in 29 C.F.R. 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 C.F.R. 5.12.

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

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

(j) Certification of Eligibility.

(1) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 C.F.R. 5.12(a)(1).

(2) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 C.F.R. 5.12(a)(1).

(3) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

**Applicable to Contracts Involving Construction Activities Exceeding \$100,000.00**

**21. Bond Requirements.** The following bonding requirements apply to types of contracts as indicated and as the case may be with respect to the underlying Contract:

(a) Bid Bond Requirements (Construction ).

(i) Bid Security. A Bid Bond must be issued by a fully qualified surety company acceptable to the CNYRTA and listed as a company currently authorized under 31 C.F.R., Part 223 as possessing a Certificate of Authority as described thereunder.

(ii) Rights Reserved. In submitting this Bid, it is understood and agreed by bidder that the right is reserved by the CNYRTA to reject any and all bids, or part of any bid, and it is agreed that the Bid may

not be withdrawn for a period of [ninety (90)] days subsequent to the opening of bids, without the written consent of the CNYRTA.

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

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

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

Performance and Payment Bonding Requirements (Construction)

(b) The Contractor shall be required to obtain performance bonds as follows:

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

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

(c) The Contractor shall be required to obtain payment bonds as follows:

(i) The penal amount of the payment bonds shall equal: (1) fifty percent of the contract price if the contract price is not more than \$1 million; (2) forty percent

of the contract price if the contract price is more than \$1 million but not more than \$5 million; or (3) two and one half million if the contract price is more than \$5 million.

(ii) If the original contract price is \$5 million or less, the CNYRTA may require additional protection as required by subparagraph (b) if the contract price is increased.

(d) Performance and Payment Bonding Requirements (Non-Construction). The Contractor may be required to obtain performance and payment bonds when necessary to protect the CNYRTA's interest.

(i) The following situations may warrant a performance bond: (1) the CNYRTA's property or funds are to be provided to the Contractor for use in performing the contract or as partial compensation (as in retention of salvaged material); (2) a contractor sells assets to or merges with another concern, and the (Recipient), after recognizing the latter concern as the successor in interest, desires assurance that it is financially capable; (3) substantial progress payments are made before delivery of end items starts; (4) contracts are for dismantling, demolition, or removal of improvements.

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

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

(iv) When it is determined that a payment bond is required, the Contractor shall be required to obtain payment bonds as follows: (1) the penal amount of payment bonds shall equal fifty percent of the contract price if the contract price is not more than \$1 million; forty percent of the contract price if the contract price is more than \$1 million but not more than \$5 million; or two and one half million if the contract price is increased.

(e) Advance Payment Bonding Requirements. The Contractor may be required to obtain an advance payment bond

if the contract contains an advance payment provision and a performance bond is not furnished. The CNYRTA shall determine the amount of the advance payment bond necessary for its protection.

(f) Patent Indemnity. The Contractor may be required to obtain a patent indemnity bond if a performance bond is not furnished and the financial responsibility of the Contractor is unknown or doubtful. The CNYRTA shall determine the amount of the patent indemnity necessary for its protection.

(g) Warranty of the Work and Maintenance Bonds.

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

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

#### **Applicable to Contracts Involving Construction and Architectural and Engineering Services**

**22. Seismic Safety Requirements.** The Contractor agrees that any new building or

addition to an existing building will be designed and constructed in accordance with the standards for Seismic Safety required in Department of Transportation Seismic Safety Regulations 49 C.F.R. Part 41, and will certify compliance to the extent required by such regulations. The Contractor also agrees to ensure that all Performance, including Performance by subcontractors, is in compliance with the Seismic Safety standards and the certification of compliance issued for the project.

**23. Special Requirements for Architectural, Engineering and Related Services.** Federal laws and regulations impose the following requirements on A&E and related procurements:

(1) Qualifications-Based Requirements. For projects related to or leading to construction, an FTA recipient must use the qualifications-based procurement procedures of 40 U.S.C. Chapter 11 (Brooks Act procedures) when contracting for A&E services and other services described in 49 U.S.C. Section 5325(b), which include program management, construction management, feasibility studies, preliminary engineering, design, architectural, engineering, surveying, mapping, or related services.

(2) Relation to Construction. The nature of the services to be performed and its relationship to construction, not the nature of the prospective contractor, determines whether qualifications-based procurement procedures may be used.

(3) Equivalent State Law. SAFETEA-LU also divided the former 49 U.S.C. Section 5325(b) by separating procurement requirements for FTA assisted A&E services from audit requirements for FTA assisted A&E services. As amended by the SAFETEA-LU Technical Corrections Act, 49 U.S.C. Section 5325(b)(1) requires A&E services to be procured using either Brooks Act procedures or an equivalent qualifications-based requirement adopted by a State before August 10, 2005.

(4) Special Requirements for Indirect Cost Rates. In addition, SAFETEA-LU amended 49 U.S.C. Section 5325 to require the acceptance of FAR indirect cost rates for applicable one-year accounting periods if those rates are not currently in dispute. After the indirect cost rates are accepted as required, the recipient must use those indirect cost rates for contract estimates, negotiation, administration, reporting, and payments, with administrative or de facto ceiling limitations.

#### **Applicable to Contracts Involving Transit Operations**

**24. Charter Service Operations.** The Contractor agrees to comply with 49 U.S.C. 5323(d) and 49 C.F.R. Part 604, which provide that recipients and subrecipients of FTA assistance are prohibited from providing charter services using federally funded equipment or facilities if at least one private charter operator willing and able to provide such service except under one of the exceptions set forth in 49 C.F.R. 604.9. However, any charter services provided under an exceptions must be "incidental" and may not interfere with or detract from the provision of mass transportation.

**25. School Bus Operations.** Pursuant to 69 U.S.C. 5323(f) and 49 C.F.R. Part 605, recipients and subrecipients of FTA assistance may not engage in school bus operations exclusively for the transportation of students and school personnel in competition with private school bus operators unless qualified under specified exemptions. When operating exclusive school bus service under an allowable exemption, recipients and subrecipients may not use federally funded equipment, vehicles or facilities.

**26. Transit Employee Protective Agreements.**

(a) General Transit Employee Protective Requirements. To the extent that the FTA determines transit operations are involved, the Contractor agrees to carry out Performance set forth in the Contract in compliance with terms and conditions determined by the U.S. Secretary of Labor to be fair and equitable to protect the interests of employees employed under the Contract and to meet the employee protective requirements of 49 U.S.C. A 5333(b) and U.S. DOL guidelines at 29 C.F.R. Part 215 (and any amendments thereto). These terms and conditions are identified in the letter of certification from the U.S. DOL to the FTA are applicable to this Contract. The Contractor agrees to carry out Performance in compliance with the conditions stated in that U.S. DOL letter. The requirements of this subsection (a), however, do not apply to any contract financed with Federal assistance provided by the FTA either for projects for elderly individuals and individuals with disabilities authorized by 49 U.S.C. § 5310(a)(2), or for projects for non-urbanized areas authorized by 49 U.S.C. § 5311. Alternate provisions for those projects are set forth in subsections (b) and (c) of this clause.



(b) Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C. § 5310(a)(2) for Elderly Individuals and Individuals with Disabilities. If the Contract involves transit operations financed, in whole or in part, with Federal assistance authorized by 49 U.S.C. § 5310(a)(2), and if the U.S. Secretary of Transportation has determined or determines in the future that the employee protective requirements of 49 U.S.C. § 5333(b) are necessary or appropriate for the State and the CNYRTA, the Contractor agrees to perform the Contract in compliance with the terms and conditions determined by the U.S. Secretary of Labor to meet the requirements of 49 U.S.C. § 5333(b), U.S. DOL guidelines at 29 C.F.R. Part 215 and any amendments thereto. These terms and conditions are identified in the U.S. DOL's letter of certification to the FTA. The Contractor agrees to perform transit operations in connection with the underlying contract in compliance with the conditions stated in that U.S. DOL letter.

(c) Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C. § 5311 in Non-Urbanized Areas. If the contract involves transit operations financed, in whole or in part, with Federal assistance authorized by 49 U.S.C. § 5311, the Contractor agrees to comply with the terms and conditions of the Special Warranty for the Non-urbanized Area Program agreed to by the U.S. Secretaries of Transportation and Labor, dated May 31, 1979, and the procedures implemented by U.S. DOL or any revision thereto.

(d) The Contractor agrees to include the any applicable requirements in each subcontract involving transit operations financed, in whole or in part, with Federal assistance provided by the FTA.

#### **Applicable to Contracts Involving Transit Operations and Safety Sensitive Functions**

**27. Drug Use and Testing/Alcohol Misuse and Testing.** The contractor agrees to establish and implement a drug and alcohol testing program that complies with 49 C.F.R. Parts 653 and 654, produce any documents necessary to establish its compliance therewith and permit any authorized representative of the United States Department of Transportation or its operating administrations, the State Oversight Agency of New York and the CNYRTA to inspect the facilities and records associated with the implementation of the Drug and Alcohol testing program as

required under 49 C.F.R. 653 and 654, and to review the testing process.

The Contractor further agrees to certify its compliance with 49 C.F.R. 653 and 654 and submit the Management Information Systems (MIS) reports annually within ten (10) days after receipt of a request for such certification by the CNYRTA, which shall in no case be later than March 15th.

The Contractor shall certify compliance by completing the "Substance Abuse Certifications," which is included on the FTA's Annual List of Certifications and Assurances available on the FTA website at: <http://www.fta.dot.gov/grants/12825.html>

**28. Federal Privacy Act Requirements.** When files containing drug and alcohol enforcement activities are created and maintained in connection with an FTA assisted contract, the following requirements apply to the Contractor and its employees that administer any system of records on behalf of the Federal Government under any contract:

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

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

#### **Applicable to Contracts Involving Intelligent Transportation Systems**

**28. Conformance with ITS National Architecture.** The following restrictions imposed by federal law may affect a particular procurement:

(a) Intelligent Transportation Systems. Intelligent Transportation System ("ITS") property and services must comply with the National ITS Architecture and Standards to the extent required by Section 5307(c) of SAFETEA-LU, "FTA National ITS Architecture Policy on Transit Projects," 66

F.R. 1455 et seq. and later published policies or implementing directives FTA may issue.

(b) Metric Measurements. The CNYRTA will accept property and services with dimensions expressed in metric measurements, to the extent practicable, in compliance with the Metric Conversion Act, as amended by 15 U.S.C. 205a et seq.; Executive Order 12770. "Metric Usage in Federal Government Programs," and all other applicable federal regulations.

(c) Use of \$1 Coins. Tom comply with Section 104 of the Presidential \$1 Coin Act, 31 U.S.C. section 5312(p), FTA assisted property that requires the use of coins or currency in public transportation services or supporting services must be fully capable of accepting and dispensing \$1 coins.

#### **Applicable to Contracts Involving Research and Development**

**29. Rights in Data.** This following requirements apply to contracts involving experimental, developmental or research work:

(a) The term "Subject Data" used in this clause means recorded information, whether or not copyrighted, that is delivered or specified to be delivered under the contract. The term includes graphic or pictorial delineation in media such as drawings or photographs; text in specifications or related performance or design-type documents; machine forms such as punched cards, magnetic tape, or computer memory printouts; and information retained in computer memory (which may, for example only, include computer software, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identifications, and related information). Subject Data does not include financial reports, cost analyses, and similar information incidental to contract administration.

(b) If relevant, the following restrictions apply to all Subject Data first produced in the performance of this Contract:

(1) Except for its own internal use, the CNYRTA or Contractor may not publish or reproduce Subject Data in whole or in part, or in any manner or form, nor may the CNYRTA or Contractor authorize others to do so, without the written consent of the Federal Government, until such time as the Federal Government may have either released or approved the release of such data to the public. This restriction on publication, however, does not apply to any contract with an academic institution.

(2) In accordance with 49 C.F.R. § 18.34 and 49 C.F.R. § 19.36, the Federal Government reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, for "Federal Government purposes," any Subject Data or copyright described in this clause. As used in the previous sentence, "for Federal Government purposes" means use only for the direct purposes of the Federal Government. Without the copyright owner's consent, the Federal Government may not extend its Federal license to any other party.

(i) Any Subject Data developed under the Contract, whether or not a copyright has been obtained; and

(ii) Any rights of copyright purchased by the CNYRTA or Contractor using Federal assistance, in whole or in part, provided by FTA.

(3) When FTA awards Federal assistance for experimental, developmental, or research work, it is FTA's general intention to increase transportation knowledge available to the public rather than to restrict the benefits resulting from the work. Therefore, unless FTA determines otherwise, if the CNYRTA and the Contractor perform experimental, developmental, or research work set forth in the underlying Contract, either FTA's license in the copyright to any Subject Data developed in the course of that contract, or a copy of the Subject Data first produced under the Contract for which a copyright has not been obtained. If the experimental, developmental, or research work, is not completed for any reason whatsoever, all data developed under the Contract shall become Subject Data as defined in this clause and shall be delivered as the Federal Government may direct. This subsection however, does not apply to adaptations of automatic data processing equipment or programs for the CNYRTA's or the Contractor's use whose costs are financed in whole or in part with Federal assistance provided by FTA for transportation capital projects.

(4) Unless prohibited by state law, upon request by the Federal Government, the CNYRTA and the Contractor agree to indemnify, save and hold harmless the Federal Government, its officers, agents and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by the CNYRTA or Contractor of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use or disposition of

any data furnished under the Contract. Neither the CNYRTA nor the Contractor shall be required to indemnify the Federal Government for any such liability arising out of the wrongful act of any employee, official or agents of the Federal Government.

(5) Nothing contained in this clause shall imply a license to the Federal Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Federal Government under any patent.

(6) Data developed by the CNYRTA or Contractor and financed entirely without using Federal financial assistance incorporated into the Performance set forth in the underlying Contract is exempt from this clause, provided that the CNYRTA or Contractor identifies such data in writing upon completion of Performance.

(7) Unless FTA determines otherwise, the Contractor agrees to include these requirements in each subcontract for experimental, developmental, or research work financed, in whole or in part, with Federal assistance provided by the FTA.

(c) Unless the Federal Government makes a later, contrary determination in writing, irrespective of the Contractor's status (i.e. a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual, etc.), the CNYRTA and the Contractor agree to take the necessary actions to provide, through the FTA, those rights in any invention due the Federal Government as described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 C.F.R. Part 401.

(d) The Contractor agrees to include these requirements in each subcontract for experimental, developmental or research work financed, in whole or in part, with Federal assistance provided by the FTA.

**30. Patent Rights.** The following requirements apply to contracts involving experimental, developmental, or research work:

(a) If any invention, improvement, or discovery is conceived or first actually reduced to practice in the course the Performance described in the underlying Contract, and that invention, improvement or discovery is patentable under the laws of the United States of America or any foreign country, the CNYRTA and Contractor agree to take actions necessary to provide

immediate notice and a detailed report such that FTA is ultimately notified.

(b) Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual), the CNYRTA and the Contractor agree to take the necessary actions to provide, through the FTA, those rights in that invention due the Federal Government as described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 C.F.R. Part 401.

(c) The Contractor agrees to include the requirements of this clause in each subcontract for experimental, developmental, or research work financed, in whole or in part, with Federal assistance provided by the FTA.

**Applicable to Contracts for Rolling Stock, Facilities Construction; Facilities Renovation**

**31. ADA Access.** The Contractor agrees to comply with 49 U.S.C. § 5301(d), which states the Federal policy that elderly individuals and individuals with disabilities have the same right as other individuals to use public transportation services and facilities, and that special efforts shall be made in planning and designing those services and facilities to implement transportation accessibility rights for elderly individuals and individuals with disabilities. The Contractor also agrees to comply with all applicable provisions of section 504 of the Rehabilitation Act of 1973, as amended, with 29 U.S.C. § 794, which prohibits discrimination on the basis of disability; with the Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. §§ 12101 et seq., which requires that accessible facilities and services be made available to individuals with disabilities; and with the Architectural Barriers Act of 1968, as amended, 42 U.S.C. §§ 4151 et seq., which requires that buildings and public accommodations be accessible to individuals with disabilities. In addition, the Contractor agrees to comply with applicable Federal regulations and directives and any subsequent amendments thereto, except to the extent the Federal Government determines otherwise in writing, as follows:

(a) U.S. DOT regulations,

"Transportation Services for Individuals with Disabilities (ADA)," 49 C.F.R. Part 37;

(b) U.S. DOT regulations, "Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance," 49 C.F.R. Part 27;

(c) Joint U.S. Architectural and Transportation Barriers Compliance Board (U.S. ATBCB)/U.S. DOT regulations, "Americans with Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 36 C.F.R. Part 1192 and 49 C.F.R. Part 38;

(d) U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability in State and Local Government Services," 28 C.F.R. Part 35;

(e) U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities," 28 C.F.R. Part 36;

(f) U.S. General Services Administration (U.S. GSA) regulations, "Accommodations for the Physically Handicapped," 41 C.F.R. Subpart 101-19;

(g) U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630;

(h) U.S. Federal Communications Commission regulations, "Telecommunications Relay Services and Related Customer Premises Equipment for the Hearing and Speech Disabled," 47 C.F.R. Part 64, Subpart F; and

(i) U.S. ATBCB regulations, "Electronic and Information Technology Accessibility Standards," 36 C.F.R. Part 1194;

(j) FTA regulations, "Transportation for Elderly and Handicapped Persons," 49 C.F.R. Part 609; and

(k) Federal civil rights and nondiscrimination directives implementing the foregoing regulations.

### **FTA Protest Procedures**

*Some CNYRTA procurements are funded, at least in part, by the Federal Transit Administration ("FTA").*

*Whenever a procurement involves FTA funds, the FTA requires that CNYRTA make available certain protest procedures. Any Bidder seeking to protest this procurement may direct general questions and questions respecting applicability of FTA protest*

*procedures to CNYRTA's Chief Executive Officer.*

The following protest procedures apply to both the pre-and post-bid stages of procurement, both of which contain elements that may be subject to protest. If the pre-bid stage has passed and no protest or appeal has been filed in accordance with the regulations set forth herein, the pre-bid elements will no longer be subject to appeal. When the post-bid procedure begins, only issues that have become evident through the opening of the bids are subject to appeal. Any issue which falls within the definition of a pre-bid element cannot be appealed during the post-bid stage unless said issue is only detectable by award of the bid.

CNYRTA must notify FTA of written protests in all instances when FTA funds are involved in the procurement for which the protest is being filed. The CNYRTA will continue to inform the FTA of the status of any protests. If the CNYRTA denies a protest it will notify the FTA Regional Administrator. The following information will be provided to the FTA:

- A list of protests involving third party contracts and potential third party contracts that:
  - Exceed \$100,000
  - Controversial matter, irrespective of amount
  - Highly publicized matter, irrespective of amount
- Information about each protest:
  - Brief Description of Protest
  - Basis of Disagreement
  - If open, how far the protest has proceeded
  - If resolved, the agreement or decision reached
  - Whether an appeal has been taken or is likely to be taken
- The information will be provided to the FTA in the next quarterly Milestone Progress Report and at the next Program Management Oversight Review, if any.

All appeals and protests must be in writing and must be marked "Protest" and sent via certified mail or courier to the following address:

**Central New York Regional  
Transportation Authority  
ATTN: Executive Director  
PROTEST  
200 Cortland Ave; P.O Box 820  
Syracuse NY, 13205-0820**

CNYRTA assumes no responsibility for appeals or protests that do not reach the Executive Director's office on a timely basis.

No awards will be made until all bid protests are resolved.

Failure to maintain strict compliance with these procedures as set forth herein will result in automatic disqualification of the protest.

### **A. Pre-Bid Opening Protests**

If a bidder can demonstrate that the specifications issued by CNYRTA are unduly exclusionary and restrictive, or that Federal, state or local laws or regulations have been violated during the course of the procurement process, the bidder may seek a review by the Executive Director or his appointed representative. Pre-bid opening protests shall be clearly identified "Protest" and submitted in writing to CNYRTA as early as possible, but in no event later than five (5) days prior to the date of bid opening. Within four (4) business days after receipt of a pre-bid/proposal protest, the Executive Director shall make one of the determinations outlined in paragraph (C) below.

### **B. Post-Bid/Proposal Opening Protests**

If a bidder has grounds to protest the acceptance or rejection of any or all offers or bids to a contract, or to the award thereof, or to any such action proposed or intended by the Authority, the bidder must formally submit a written protest to CNYRTA Executive Director no later than five (5) business days after the bid/proposal opening date, outlining in detail the action or the proposed or intended action to which he/she protests.

### **C. Rulings on Protests**

Within ten (10) business days after receipt of a pre-bid or post-bid protest, the Executive Director shall render one of the following determinations:

- Protest is overruled
- Protest is substantiated. The Executive Director shall issue instructions to remedy issues relating to the protest

- Procurement activity is suspended until further written notification by the Executive Director.

The determination shall be in writing and shall provide, at a minimum, a general response to each material issue raised in the protest. All documents submitted by the protestor and/or Authority staff and reviewed by the decision-maker in the determination shall form and be retained by the Authority as the formal record of the dispute resolution process.

The issuance of the foregoing determination is the Authority's final decision of the dispute.

All interested parties (including the successful bidder, all rejected bidders and any other parties which CNYRTA in its sole discretion determines are interested parties) shall be notified of any protests that are filed.

CNYRTA shall refrain from awarding a contract within five (5) days of the date a decision is rendered by the Executive Director regarding a protest, unless CNYRTA determines that any one or more of the following criteria exist:

1. The items to be procured are urgently required;
2. Delivery or performance will be unduly delayed by the failure of CNYRTA to make a prompt award; or
3. Failure to make a prompt award will otherwise cause undue harm to CNYRTA or the Federal government.

#### **D. Protester's Appeal to the FTA**

In the event that CNYRTA fails to abide by the protest procedures set forth above, and Federal funds are being utilized in connection with the procurement, the protestor may seek a review by the FTA.

The FTA will only consider a protest if the CNYRTA:

- Does Not have protest procedures; or
- Has not complied with its protest procedures; or
- Has not reviewed the protest when presented an opportunity to do so; or
- There is a violation of Federal Law or regulations.

Protests shall be filed with the FTA Regional Administrator for the region administering the project no later than five (5) days after a final decision is rendered under CNYRTA's protest procedure. In instances where the protestor alleges that the grantee failed to make a final determination on the protest, protestors shall file a protest with FTA no later than five (5) days after the protestor knew or should have known of CNYRTA's failure to render a final determination on the protest.

Specific FTA filing procedures are set forth in FTA Circular 4220 (most recent version.) CNYRTA shall also provide all further information necessary to file a protest with the FTA

Central New York Regional Transportation Authority  
General Management Organization Chart



