

NOTICE TO BIDDERS

Sealed bids for **Project PA-TI-2023-001; Camp Junior on Lake Tiorati - Phase 3** in Harriman State Park, Southfields, Orange County, New York will be received by the New York State Office of Parks, Recreation and Historic Preservation (OPRHP), Saratoga/Capital Region at 19 Roosevelt Drive, Saratoga Springs, NY 12866 until **1:00 PM local time, Thursday, July 20, 2023** when they will be publicly opened and read. The Company Name, Street Address, Federal Identification Number, Contract D number and Project Description should be clearly marked on the envelope, along with the words "BID DOCUMENTS". Each bid must be prepared and submitted in accordance with the Instructions to Bidders and must be accompanied by Bid Security in the form of a certified check, bank check, or bid bond in the amount of:

General Construction Contract Construction of 3 buildings w/ related site work and a canopy at existing patio. Engineer's Estimated Range: \$1,169,200.00 to \$1,581,700.00	D006135	\$68,700.00	Sixty-Eight Thousand Seven Hundred and 00/100 Dollars
Electrical Contract Electrical work at 3 buildings; limited exterior lighting at an existing building. Engineer's Estimated Range: \$138,400.00 to \$187,200.00	D006136	\$8,100.00	Eight Thousand One Hundred and 00/100 Dollars
Plumbing Contract Plumbing work at two bathhouses and a latrine cabin. Engineer's Estimated Range: \$172,100.00 to \$232,700.00	D006137	\$10,100.00	Ten Thousand One Hundred and 00/100 Dollars
Mechanical Contract Mechanical exhaust ventilation work at two bathhouses. Engineer's Estimated Range: \$28,500.00 to \$38,400.00	D006138	\$1,600.00	One Thousand Six Hundred and 00/100 Dollars

The Bid Opening will be conducted in person and via WebEx Link:

<https://meetny.webex.com/meetny/j.php?MTID=m477174ca2eaf170f73a97330bdfa4850>

MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISE (MWBE) PARTICIPATION GOALS

MWBE Participation Goals have been established for **Construction Contract D006135** at:

Minority Owned Business Enterprise (MBE)	25%
Women Owned Business Enterprise (WBE)	5%

MWBE Participation Goals have been established for **Electrical Contract D006136** at:

Minority Owned Business Enterprise (MBE)	0%
Women Owned Business Enterprise (WBE)	19%

MWBE Participation Goals have been established for **Plumbing Contract D006137** at:

Minority Owned Business Enterprise (MBE)	10%
Women Owned Business Enterprise (WBE)	10%

MWBE Participation Goals have been established for **Mechanical Contract D006138** at:

Minority Owned Business Enterprise (MBE)	Good Faith Efforts
Women Owned Business Enterprise (WBE)	Good Faith Efforts

SERVICE-DISABLED VETERAN OWNED BUSINESS (SDVOB) GOALS

The following goals for SDVOB participation on this project have been established:

SDVOB Participation Goals have been established for Construction Contract D006135 at 6%.
SDVOB Participation Goals have been established for Electric Contract D006136 at 0%.
SDVOB Participation Goals have been established for Plumbing Contract D006137 at 10%.
Good Faith Efforts apply to SDVOB Participation for Mechanical Contract D006138 .

PUBLIC BUILDING LAW § 8(6)

Pursuant to Public Building Law § 8(6), any contracts over \$5,000 for the work of construction, reconstruction, alteration, repair, or improvement of any State building, a responsible and reliable NYS-certified Minority or Women-Owned Business Enterprise that submits a bid within ten percent of the lowest bid will be deemed the apparent low bidder provided that the bid is \$1,491,110 or less (maximum amount has been adjusted for inflation effective January 1, 2023). If more than one responsible and reliable MWBE firm meets the requirements, the MWBE firm with lowest bid will be deemed the apparent low bidder.

PROJECT MILESTONE AND COMPLETION DATES

Contractor shall substantially complete the work of this Contract (that is, buildings and other components complete and useable by campground staff and campers) by the Milestone Date of May 10, 2024. The completion date for this project is 240 days after agreement has been approved by the NYS Comptroller's Office.

Project Specific Liquidated Damages (Refer to Article 14.10 of the General Conditions).

The Contractor agrees, in the event the Contractor fails to complete all the work on time, to pay the Office Liquidated Damages as per the General Conditions, Article 14.10, for each day of delay in the physical completion of the work.

Starting on the advertisement date, Bidding & Contract Documents may be obtained free of charge in Portable Document Format (PDF) or USB Drive by mail, by contacting Magen Bauer, Magen.Bauer@parks.ny.gov or Tammy Murray, Tammy.Murray@parks.ny.gov Bidding and Contract Documents may be examined and obtained (free of charge) in person from NYS OPRHP, Saratoga/Capital Region, 19 Roosevelt Drive, Saratoga Springs, NY 12866.

In accordance with State Finance Law, Section 139-j, the following agency staff have been designated as contacts for this contract:

Daniel Neary (Project Manager)	1-518-584-2000 x243	Daniel.Neary@parks.ny.gov
Michael Tesik (Assist. Dist. Mgr.)	1-845-786-2701 x228	Michael.Tesik@parks.ny.gov
Magen Bauer	1-518-474-3258	Magen.Bauer@parks.ny.gov
Tammy Murray	1-518-474-3831	Tammy.Murray@parks.ny.gov

Please note that contacting any other agency staff regarding this contract may be a violation of State Finance Law, Section 139-j, resulting in a determination of contractor non-responsibility.

EXECUTIVE ORDER No. 16

The successful bidder will be required to furnish an Executive Order No. 16 certification form prior to contract award.

The Executive Order can be found here: <https://www.governor.ny.gov/executive-order/no-16-prohibiting-state-agencies-and-authorities-contracting-businesses-conducting>

The Executive Order Certification Form can be found here:
https://ogs.ny.gov/system/files/documents/2022/04/eo16_certification.pdf

BONDS

The successful bidder will be required to furnish a Performance Bond and a Labor and Material Bond/Payment Bond in the statutory form of public bonds required by Sections 136 and 137 of the State Finance Law, each for 100% of the amount of the Contract.

There will be a pre-bid meeting on Tuesday, June 20, 2023, at 11:00 AM at Dining Hall Building #404 at Camp Junior Campground on Tiorati Brook Road, Southfields, New York 10975 (see Drawing Sheet L100 - Overall Site Plan).

All Requests for Information (RFIs) are due by 5:00 PM on Wednesday, July 12, 2023.

RFIs should be submitted by e-mail to: Daniel.Neary@parks.ny.gov

RFIs received after this due date and time will not be processed.

State's Rights to Proposals

By submitting a bid, the Bidder agrees not to make any claim for, or have any right to, damages because of any misinterpretation or misunderstanding of the specifications, or because of any misinformation or lack of information. OPRHP reserves the right to exercise the following:

- Change any of the scheduled dates herein;
- Amend IFB requirement(s) after their release to correct errors or oversights, or to supply additional information as it becomes available;
- Withdraw the IFB, at its sole discretion without any obligation or liability to any vendor;

- Eliminate any mandatory, non-material requirement that cannot be complied with by all of the prospective Bidders;
- Evaluate, accept and/or reject any and all bids, in whole or in part, and to waive technicalities, irregularities, and omissions if, in OPRHP's judgement, the best interests of OPRHP will be served. In the event compliant bids are not received, OPRHP reserves the right to consider late or non-conforming bids as offers;
- Require the Bidder to demonstrate, to the satisfaction of OPRHP, any information presented as part of their proposal;
- Require clarification at any time during the procurement process and/or require correction of arithmetic or other apparent errors for the purpose of assuring a full and complete understanding of a Bidder's proposal and/or to determine an Bidder's compliance with the requirements of this solicitation;
- Disqualify any Bidder whose conduct and/or bid fails to conform to the requirements of the solicitation;
- Use proposal information obtained through OPRHP investigation of a Bidder's qualifications, experience, ability or financial standing, and any material or information submitted by the Bidder in response to OPRHP's request for clarifying information in the course of evaluation and selection under this IFB;
- Prior to the award, determine a tie breaking mechanism for award of the Contract to serve the best interests of OPRHP and the State of New York;
- Negotiate with the successful Bidder within the scope of the IFB to serve the best interests of OPRHP and the State of New York;
- Conduct Contract negotiations with the next ranked responsible Bidder, should OPRHP be unsuccessful in negotiating an Agreement with the selected Bidders;
- Move to the next ranked responsible low Bidder should the low bidder fail to implement the requirements of the bid;
- If OPRHP terminates the Contract for non-performance, OPRHP reserves the right, with the approval of the New York State Office of the Attorney General and the Office of the State Comptroller, to award a contract to the next highest ranked Bidder of the original bid submission within the first twelve months of the award;
- Utilize any and all ideas submitted in the bids received;
- Make an award under the IFB in whole or in part; and
- Seek revisions of bids.

Bids containing false or misleading statements, or which provide project contacts that do not support an attribute or condition claimed by a Bidder, may be disqualified from consideration. If, in the opinion of OPRHP, a statement is intended to mislead OPRHP in its evaluation of the bid, and the attribute, condition, or capability is a requirement of the IFB, the bid shall be disqualified from consideration.

Response to Bidder Questions and Requests for Clarification

OPRHP will provide a written response to all substantive questions and requests for clarification.

Tie Bids

In the event there is a tie final determination will be made by the OPRHP Deputy Commissioner for Capital.

Modification or Withdrawal of Bids

Bid modifications that are submitted in writing and signed by an authorized representative of the bidding firm will be considered for award if received by OPRHP prior to the scheduled proposal due date. Bids may be withdrawn or cancelled prior to the scheduled proposal due date. A bid may be rejected by OPRHP: if it shows any alteration of terms, conditions, or requirements; for any other irregularities; if it is incomplete, or if it offers an alternate bid not invited by the specifications.

Freedom of Information Law

Your bid to OPRHP, including accompanying documents, is subject to the Freedom of Information Law (FOIL) found in Article 6 of the N.Y. Public Officer Law. FOIL provides that certain records are exempt from disclosure, including those that contain (1) trade secrets, (2) information that, if disclosed, would cause substantial injury to the competitive position of your organization, or (3) critical infrastructure information. Records may be redacted to protect only the portions of documents that fall within a FOIL exemption. An entire document may not be withheld if only a portion of the document is exempt from disclosure. Blanket assertions that information is a trade secret, confidential, or proprietary are insufficient to justify withholding information under FOIL. If you identify information seeking an exemption from public disclosure due to the above-mentioned reasons such request will be reviewed, and a determination will be made as to whether the information is exempt from disclosure under FOIL. However, such submissions seeking non-disclosure will not be considered unless it is accompanied with an explanation justifying the privilege. The State's determination may be appealed pursuant to POL §89(5)(c). Pursuant to POL §87(2)(b), the State, without having to request it, will redact information that "if disclosed would constitute an unwarranted invasion of personal privacy."

Timely Submission

The Bidders are solely responsible for timely delivery of their bid to the location set forth by the stated bid due date/time and are solely responsible for delays in receipt, including but not limited to those due to third-party carriers.

Bidder Proposal Clarification

Prior to award, OPRHP reserves the right to seek clarifications, request proposal revisions, or to request any information deemed necessary for proper evaluation of proposals from all Bidders deemed to be eligible for Contract award. Failure of a bidder to cooperate with OPRHP's effort to clarify a proposal may result in the proposal being labeled as non-responsive and be given no further consideration.

Additionally, OPRHP reserves the right to use information submitted by the Bidder in response to OPRHP's request for clarifying information in the course of evaluation and selection under this IFB.

Bid Review and Contract Approval

The Contract resulting from this IFB will not be effective until approved by the Office of the Attorney General and the Office of the State Comptroller.

Debriefing Sessions

A debriefing is available to any entity that submitted a proposal or bid in response to a solicitation ("Bidder"). A Bidder will be accorded fair and equal treatment with respect to its opportunity for debriefing.

Debriefing must be requested in writing by any bidder within fifteen (15) calendar days of OPRHP notifying the unsuccessful bidders that another vendor was selected.

A bidder's written request for a debriefing must be submitted to the designated contact listed on the cover of this IFB.

The debriefing will be scheduled within ten (10) business days of receipt of written request by OPRHP or as soon after that time as practicable under the circumstances.

Bid Protest Procedure

OPRHP procedures for handling protests of bid awards are set forth in the Bid Protest Procedures which can be found at the end of this document.

Indemnification

The Contractor agrees to indemnify, defend, save, and hold harmless the State of New York, OPRHP, and their officers, employees, and agents of and from any claims, demands, actions, or causes of action of any kind arising out of the services of the Contractor provided for in this agreement.

Solicitation

This IFB is a solicitation to bid, not an offer of a contract.

Bid Protest Procedures

It is the policy of the Office of Parks, Recreation and Historic Preservation (OPRHP) to provide bidders with an opportunity to administratively resolve disputes or inquiries related to OPRHP contract awards. Bidders are encouraged to seek resolution of disputes through consultation with the Designated Contact(s). After being notified of the results of this contract opportunity, any entity or individual that participated in the procurement may submit a protest of the resulting contract award.

OPRHP reserves the right to suspend, modify, or cancel this procurement at any time during the procurement process. OPRHP also reserves the right to waive or extend the deadlines in this procedure.

Submission of Formal Written Protests

Protests must be received by the Designated Contact no later than five (5) business days after a debriefing or ten (10) business days after the written notice of selection or non-selection for contract award, whichever is later.

Protests must be submitted in writing, clearly marked as a protest on the envelope or in the email subject line, and include the following information:

1. Solicitation or contract number
2. Name, address, email address and telephone number of the filer
3. Detailed statement of the legal and factual grounds for the protest
4. Statement of the relief requested
5. Copies of relevant documents

Agency Response

Within 30 business days of receipt of a protest, OPRHP's protest officer (the Director of Audit or her designee) will respond with a protest determination stating the agency's decision on the protest and the reasoning on which it is based. In making a determination, the protest officer will consider the legal and factual grounds stated in the protest, consult with the Designated Contact and appropriate program staff, and review all relevant documents.

Finality; Appeal

For contract opportunities subject to the approval of the Office of the State Comptroller, the protesting party may appeal OPRHP's protest determination to the Office of the State Comptroller in accordance with the regulations contained in Part 24 of Title 2 of the New York Codes, Rules and Regulations.

For contract opportunities that are not subject to the approval of the Office of the State Comptroller, OPRHP's protest determination is the conclusive and final determination of the protest.

Nothing in these bid protest procedures is intended to limit or impair the rights of any bidder to seek and pursue remedies of law through the judicial process.

INSTRUCTIONS TO BIDDERS

EXAMINATION OF DOCUMENTS

Carefully examine and be familiar with the Bidding and Contract Documents.

Examine the information concerning subsurface or other latent physical conditions. It is presented in good faith but is not intended as a substitute for personal investigation, interpretations or judgment of the Contractor.

VISIT TO THE SITE

Visit the site of the work prior to submitting bid. Phone Designated Contact listed on the Notice to Bidders for appointment 24 hours in advance of visit.

Become familiar with restrictions and regulations relating to the Facility. Existing restrictions and regulations will not be considered as grounds for any additional cost over the Contract sum.

Assume the risk of encountering any subsurface or other latent physical condition which can be reasonably anticipated on the basis of documentary information provided by the Office of Parks, Recreation and Historic Preservation (the Office) and from inspection and examination of the site.

Interpretations of Contract Documents by Facility personnel are not binding.

RESOLUTION OF DISCREPANCIES AND AMBIGUITIES

Direct all questions regarding the intent or meaning of the drawings or specifications to the contact person identified on the cover of the Contract Documents. Such an inquiry may be telephoned or submitted in writing using provided RFI form. The reply to such an inquiry, when deemed necessary, will be communicated by Addendum to all persons who have obtained drawings and specifications.

Pre-bid inquiries answered by means other than Addenda will not be binding.

PREPARATION OF BIDS

Bidders shall submit bids on the official form furnished by the Office. Make no changes of any kind in the bid form phraseology, or anywhere on the bid form. Fill in all blank spaces legibly and in ink. All amounts shall be given in full in both writing and also in figures. In case of a discrepancy between the amount written in words and that given in figures, the amount written in words is binding. Make no erasures on the bid form. If a mistake is made, use a new bid form. New forms may be obtained at the address shown on the Notice to Bidders.

When the Contract Documents require alternate price quotations, indicate the amounts to be added to or deducted from the base bid. If the work is to be performed at no change in cost, indicate the word "NONE". Any bid which fails to indicate a sum or the word "NONE", shall be considered informal and may be rejected.

Sign the bid form in the space provided. An officer or a principal of a corporation or a partnership signing for the bidder shall print or type the legal name of the person, partnership or corporation on the line provided and place his or her signature after "SIGN BID HERE". The same procedure shall apply to the bid of a joint venture by two or more firms, except that the signature and title of an officer or a principal of each member firm of the joint venture shall be required.

Note in the spaces provided on the bid form, the Addenda, by numbers and dates, which have been received. If no Addenda have been received, insert the word "NONE".

ADDRESS OF PROSPECTIVE BIDDER

Use street address in addition to a Post Office Box address (if any).

BID SECURITY INFORMATION

Bid Security, in the amount shown on the Notice to Bidders, is required to be submitted with the bid as a guarantee that the bidder will enter into the Contract if awarded, and that the bidder will furnish all required information to enter into the Contract within ten days after receipt of notice of award. Bid Security shall consist of a bid bond or a certified check or a bank check drawn upon a legally incorporated bank or trust company and payable to the Office of Parks, Recreation and Historic Preservation. The bid bond must be from a Surety company approved by the State. The form of any bid bond and the surety issuing it shall be subject to the approval of the Office. The Bid Security of the two lowest bidders will be returned upon the acceptance of the Performance and the Labor and Material Bonds and the execution of the Contract by the lowest bidder. The Bid Security of all other bidders will be returned as soon as possible after the low bidder is determined.

NEW YORK STATE BUSINESSES INFORMATION

Contractors are encouraged to use and work with New York State Businesses. Accordingly bidders are required to complete and submit the form which will allow us to track this information. Please complete and include the form "Encouraging Use of New York State Businesses in Contract Performance" with your bid. The apparent low bidder will be asked to identify the New York State businesses that will be used.

SUBMISSION OF BID

Submit Bid Form and Bid Security, if required in the Notice to Bidders, in a sealed envelope. The Company Name, Street Address, Federal Identification Number, Contract D number and Project Description should be clearly marked on the envelope, along with the words "BID DOCUMENTS".

All bids must be received at or before the time specified, at the place designated for bid opening.

A late bid will be considered if (1) its arrival at the place designated after the time specified can be shown by documentary or other proofs to be due to the mishandling by employees of the Office and (2) that absent such mishandling, the bid would have arrived timely. Delays in the U.S. Mail or any other means of transmittal, including by couriers or agents of the State of New York (State), other than employees of the Office will not suffice to excuse late arrival.

A late bid not eligible for consideration will be returned unopened with notification of the reason for its refusal.

MODIFICATION OF BID

Bid modifications by amendment may be considered on condition that:

1. The amendment arrives before the time set for the bid opening.
2. The amendment is in writing and signed by the bidder.
3. The bid, as amended, conforms in all respects with the Contract Documents.

WITHDRAWAL OF BID

A bid may be withdrawn at any time prior to the time specified for opening.

After the bid opening, a bidder may request the withdrawal of its bid by a written application on the grounds of a demonstrable mistake. Such written application must be made within seven days after the bid opening unless the Office, at its sole discretion, grants a time extension. Upon receiving such written application, the Office will review and decide the bidder's withdrawal request based on the three elements below. A bid may be withdrawn if, before any detrimental change of position by the State has occurred, the bidder establishes that:

1. a verifiable error occurred in the computation of the bid, and
2. absent the mistake the bid would have been substantially higher, and
3. if directed to proceed with the Contract at the price set forth in the bid, the bidder would suffer a substantial loss on the contract.

Each element must be proven by clear and convincing evidence in order to justify withdrawal. The judgment of the Office shall be final and conclusive. Should the judgment be against allowing withdrawal, then the failure of the bidder to proceed would be cause for forfeiture of its bid bond.

DISQUALIFICATION OF BIDDERS

The State reserves the right to disqualify bids, before or after opening, upon evidence of collusion with intent to defraud or other illegal practices upon the part of the bidder.

OPENING OF BIDS

Bids shall be opened as announced in the Notice to Bidders. Bidders or their authorized agents are invited to attend.

AWARD OF CONTRACT

The Contract may be awarded to the lowest responsible and reliable bidder as will best promote public interest.

If alternates are included in the bidding documents, the Office reserves the right to accept or reject any or all alternates. The lowest bid will be determined by the sum of the base bid and the accepted alternates in the manner prescribed on the Bid Form.

If alternate base bids are indicated in the bidding documents, the low bid will be determined by the lowest amount bid for any of the alternate base bids.

The Office reserves the right to reject any or all bids, and advertise for new bids, if in its opinion the best interest of the Office will hereby be promoted. In the event that all bids are rejected, each bidder will be so notified.

No later than 45 days after the bid opening, the Office shall accept bids or reject all bids. Written notification of acceptance with the final Contract shall be mailed or delivered to the selected bidder. If the selected bidder fails to execute and return the Contract with the bidder's Performance Bond, Labor and Material Bond, and Certificate of Insurance, within ten days of receipt of notification, the Office shall have the right to reject the bid and select next lowest bidder. In this case, the Bid Security of the first bidder shall be forfeit.

INFORMALITIES

Any bid which fails to conform to the requirements of the Bidding and Contract Documents may be rejected.

The Commissioner or Commissioner's Representative reserves the right to waive as an informality any irregularity contained in any bid or afford the bidder an opportunity to remedy any deficiency resulting from a minor irregularity.

EQUAL EMPLOYMENT OPPORTUNITY

If the value of this contract exceeds \$25,000, no later than seven days after being notified of the award of the contract, the Bidder shall submit, an Equal Employment Opportunity Policy Statement on a form to be provided by the Office.

DETERMINATION OF CONTRACTOR'S RESPONSIBILITY

1. The State Finance Law requires that contracts for public work in the State of New York be

awarded to the lowest responsible and reliable bidders as will best promote the public interest.

2. In order to assist the State in determining the responsibility and reliability of the apparent low bidder for any competitively bid contract of \$10,000 or more, and any proposed subcontract work valued at \$10,000 or more, each apparent low bidder and all proposed subcontractors will be required to submit a “New York State Vendor Responsibility Questionnaire For-Profit Construction” (Form CCA-2) prior to contract award or subcontractor approval.
2. The apparent low bidder must submit a completed “New York State Vendor Responsibility Questionnaire For-Profit Construction” (Form CCA-2) to the foregoing address within 24 hours after the bids are opened.
4. The Office recommends that vendors file the required Vendor Responsibility Questionnaire online via the New York State VendRep System, however, vendors may choose to complete and submit a paper questionnaire. To enroll in and use the New York State VendRep System, see the VendRep System Instructions available at : http://www.osc.state.ny.us/vendrep/vendor_index.htm or go directly to the VendRep System online at <https://portal.osc.state.ny.us>. For direct VendRep System user assistance, the Office of the State Comptroller’s Help Desk may be reached at 866-370-4672 or 518-408-4672 or by email at ciohelpdesk@osc.state.ny.us. Vendors opting to file a paper questionnaire can obtain the appropriate questionnaire from the VendRep website www.osc.state.ny.us/vendrep or may contact the Office of Parks Recreation and Historic Preservation (if not included already in these documents).

5. ADDITIONAL CONTRACTOR RESPONSIBILITY

(A) Contractor shall at all times during the Contract term remain a responsible vendor. Contractor agrees, if requested by the Office, to present evidence of its continuing legal authority to do business in New York State, its integrity, experience, ability, prior performance, and organizational and financial capacity to carry out the terms of this Contract.

(B) The Office reserves the right to suspend any or all activities under this Contract, at any time, when the Office discovers information that calls into question the responsibility of Contractor. In the event of such suspension, Contractor will be given written notice outlining the particulars of such suspension. Upon issuance of such notice, Contractor must comply with the terms of the suspension order. Contractual activities may resume at such time as the Office issues a written notice authorizing resumption of contractual activities.

(C) Notwithstanding the provision of Article 15 of the General Conditions of the Contract pertaining to Termination and Revocation, upon written notice to Contractor and a reasonable opportunity to be heard with appropriate Office staff, this Contract may be terminated by the Office at Contractor’s expense where Contractor is determined by the Offices to be non-responsible. In such event, State Parks may pursue available legal or equitable remedies for breach.

OMNIBUS PROCUREMENT ACT OF 1992

1. It is the policy of the New York State Office of Parks, Recreation and Historic Preservation to maximize opportunities for the participation of New York State business enterprises, including minority and women-owned enterprises, as bidders, subcontractors and suppliers on its procurement contracts.
2. Information on the availability of New York State subcontractors and suppliers is available from:
NYS Department of Economic Development
Division for Small Business
One Commerce Plaza, 9th Floor
Albany, NY 12245
Telephone: (518) 473-0499 FAX: (518) 486-7577

NOTE: Companies requesting lists of potential subcontractors and suppliers are encouraged to identify the SIC code, size and location of vendors.

3. A directory of certified minority and women-owned business enterprises is available online at <https://ny.newnyccontracts.com/FrontEnd/VendorSearchPublic.asp> or from:

NYS Department of Economic Development
Division of Minority and Women's Business Development
625 Broadway
Albany, New York 12207
Telephone: (518) 292-5250 Fax: (518) 292-5803

4. Bidders located in foreign countries are hereby notified that New York State may seek to obtain and assign or otherwise transfer offset credits created by this procurement contract to third parties located in New York State. The successful contractor shall agree to cooperate with the State in efforts to get foreign countries to recognize offset credits created by the procurement contract.
5. When the bid amount is equal to or greater than \$1,000,000, the bidder is required to certify compliance with the Omnibus Procurement Act of 1992 to the Office in its bid proposal.
6. The apparent low bidder will be required to submit documentation of such compliance with the requested documents.

LIQUIDATED DAMAGES

The agreement documents contain a provision that the Contractor will pay liquidated damages for each day of delay in the physical completion of the work.

REFUND OF DEPOSIT FOR DRAWINGS AND SPECIFICATIONS

Do not return drawings and specifications. **No refunds** will be made.

WORKERS' COMPENSATION INSURANCE AND DISABILITY BENEFITS REQUIREMENTS

A policy covering the obligations of the Contractor in accordance with the Workers' Compensation Law and the Disability Benefits Law covering all operations under the contract, whether performed by the contractor or the subcontractor is required for all contracts. See Article 21.4 and 21.5 of the General Conditions.

ELECTRONIC PAYMENTS

The Office encourages all Contractors and Vendors doing business with New York State to enroll in and receive payments electronically. Visit the State Comptroller's web site:

<http://www.osc.state.ny.us/vendors/index.htm#epayment> to enroll in the ePayments Program.

FORMS

Various provisions of the bidding and contract documents may require a bidder or contractor to submit certain forms. Not all forms will be required of all bidders, and some forms, such as Bid Bonds, Performance Bonds and Labor and Material Bonds will generally be provided by others(e.g., the American Institute of Architects - AIA). However, samples and/or copies of all forms are available from the Contact Person(s) designated on the first page of the Bidding and Contract documents. Forms available from the Contact Person include but are not limited to: Reporting forms for State and Federal programs which provide for participation by minority group members and women as suppliers, subcontractors and employees; Contractor's Monthly Activity Report and Application for Payment; Certificate of Acceptance (final payment); Prime Contractor's Certification; Subcontractor's Certification; Workers Compensation and Payroll Forms.



ENCOURAGING THE USE OF NYS BUSINESSES IN CONTRACT PERFORMANCE

Bidder's Name _____ **Date:** _____

New York State businesses have a substantial presence in State contracts and strongly contribute to the economies of the state and nation. In recognition of their economic activity and leadership in doing business in New York State (NYS), bidders are strongly encouraged and expected to consider NYS businesses in the fulfillment of the requirements of this contract. Such partnering may be as sub-contractors, suppliers, or other supporting roles (herein collectively called "Subcontractors").

Bidders need to be aware that, if selected, they will be strongly encouraged, to the maximum extent practical and consistent with legal requirements, to use responsible and responsive NYS Subcontractors in performing this contract, including without limitation: (i) purchasing commodities; and (ii) utilizing services and technology. Further, bidders are reminded that they must continue to utilize small, minority and women-owned businesses, consistent with the current State law / this contract.

Utilizing New York State businesses in State contracts will help create more private sector jobs, rebuild New York's infrastructure, and maximize economic activity to the mutual benefit of the contractor and its NYS business partners. NYS businesses will promote the contractor's optimal performance under the contract, thereby benefitting public sector programs that are supported by associated procurements.

Public procurements can drive and improve the State's economic engine through promotion of the use of New York businesses by its contractors. The State therefore encourages bidders to provide maximum assistance to NYS businesses in their use of the contract. The potential participation by all kinds of NYS businesses will deliver great value to the State and its taxpayers.

Bidders can demonstrate their commitment to the use of NYS businesses by responding to the questions below (Note: Negative responses will not adversely affect contract selection):

(A) Do you anticipate the need for Subcontractors fulfilling the requirements of this contract?

Yes ____ No ____

(B) Do you anticipate that NYS businesses will be used in the performance of this contract as Subcontractors?

Yes ____ No ____

NOTE: If the answer to question B is Yes, please identify the NYS business that will be used and attach identifying information (e.g. name, address, contact information, nature of business). In addition, please be prepared to provide the NYS Office of Parks, Recreation and Historic Preservation with the amounts paid to NYS businesses on a regular basis (at least quarterly).

REPLACEMENT CONDITION – ARTICLE 9 – PERMITS AND COMPLIANCE WITH APPLICABLE LAWS

This replacement modifies the General Conditions. Where any part of the General Conditions is modified by this replacement, the unaltered provisions of that part shall remain in effect.

ARTICLE 9 – PERMITS AND COMPLIANCE WITH APPLICABLE LAWS

Remove paragraph 9.5 and replace with the following:

9.5 The Contractor certifies and warrants that all heavy-duty vehicles, as defined in New York State Environmental Conservation Law (ECL) section 19-0323, to be used under this Contract will comply with the specifications and provisions of ECL section 19-0323, as well as any regulations promulgated pursuant thereto, including NYCRR Part 248; which, requires the use of Best Available Retrofit Technology (BART) and Ultra-Low Sulfur Diesel (ULSD) fuel.

END OF DOCUMENT

Created:

Edited and/or Printed:

XXXXXX-X

Project No.

SUPPLEMENTARY CONDITIONS

SUPPLEMENTARY CONDITIONS - ARTICLE 18 – SUBCONTRACTS

This supplement modifies the General Conditions. Where any part of the General Conditions is modified by this supplement, the unaltered provision of that part shall remain in effect.

ARTICLE 18 – SUBCONTRACTS

Add the following paragraph 18.5:

18.5 The Contractor shall perform with its own organization contract work amounting to not less than 50 percent of the original total contract bid price, except any contract work designated by Parks as “Specialty Work” may be performed by subcontract and the amount of any such “Specialty Work” may be deducted from the original total contract bid price for purposes of computing the amount of work required to be performed by the Contractor with its own organization. The contract amount upon which the 50 percent requirement is computed includes the cost of materials and manufactured products which are to be purchased or produced by the Contractor under the contract requirements.

18.5.1 “Its own organization” shall be construed to include only workers employed and paid directly by the Contractor and equipment owned or rented by it, with or without operators.

18.5.2 “Specialty Work” shall be construed to be limited to work that requires specialized knowledge, skill or equipment not ordinarily available in contracting organizations qualified to bid on the contract as a whole and in general are to be limited to minor components of the overall contract.

18.5.3 The Contractor’s agreed-upon amount to be paid to each subcontractor for Wicks Exempt projects, as submitted with its bid, may be deducted from the original total contract bid price before computing the amount of work required to be performed by the Contractor with its own organization.

END OF DOCUMENT

SUMMARY OF AND IMPLEMENTATION GUIDELINES FOR § 139-J OF THE STATE FINANCE LAW

* This summary is not intended to replace the need for persons to become familiar with the full requirements of the law. Please refer to the full text of the law to resolve any questions you may have with regard to your conduct under it.

Section 139-j of the State Finance Law imposes restrictions on the type of communications that a person may make to a governmental entity, such as the Office of Parks, Recreation and Historic Preservation (hereafter, referred as “OPRHP”), concerning a governmental procurement during a period of time which the law terms the “restricted period.” These new requirements cover a wide range of government contracting transactions, including, the purchase of a commodity, service, technology, public work, construction and revenue contract, or the purchase, sale or lease of real property or the acquisition or the granting of other interests in real property (hereafter referred as “governmental procurement or procurement contract.” Any person in the private sector (hereinafter referred to as “person”) interested in contacting OPRHP concerning anyone of these types of transactions is covered under the provisions of the new law, which limits the way that such person can communicate with OPRHP during the “restricted period”, which is defined broadly as the period of time commencing from the earliest written notice announcing a government procurement all the way until the award is approved by the comptroller.

For each governmental procurement OPRHP will designate an employee or employees that may be contacted by persons concerning all aspects of the governmental procurement. The law requires that each person that contacts (in writing, orally, or via email) OPRHP concerning a governmental procurement may only make what the law terms “permissible contacts”, which means that the person: 1) shall contact only the designated person or persons identified by OPRHP in the governmental procurement documents and 2) shall not attempt to influence the procurement in a manner that would result in violation of §73(5) of the Public Officers Law (Ethical Prohibitions on Gifts to Public Officers and Employees) or in a manner that would result in violation of §74 of the Public Officers Law (The Code of Ethics).

The law specifically permits certain types of contacts by persons to OPRHP concerning the governmental procurement. These are:

- the submission of written proposals in response to a request for proposal, invitation for bids or any other method for soliciting a response from interested parties;
- the submission of written questions to a designated contact, when all written questions and responses are to be disseminated to all persons interested in such procurement;
- participation in a conference where all interested parties are invited to attend;

- written complaints made to the General Counsel's Office of OPRHP concerning the timely response to issues posed to the designated person, provided that such written complaints are made part of the procurement record;
- communications where the contract award has been tentatively made and where such communications are necessary to negotiate the terms of the procurement contract;
- requests made to the designated person or persons to review the procurement award;
- written protests, appeals, or other review proceedings to either OPRHP or an outside agency.

All communications which are reasonably inferred by OPRHP to be intended to influence the governmental procurement process or the award of such procurement in violation of the law will be recorded and made a part of the procurement record, whether such communications are made to the designated employee/s or another employee of OPRHP. Contacts made to persons other than the designated OPRHP employee shall also be deemed an impermissible contact.

Any contact which is alleged to be an impermissible contact under the law will be immediately referred to and investigated by OPRHP's Ethics Officer. The Ethics Officer shall promptly investigate the allegation by interviewing all employees reasonably involved or who are believed to have information about the impermissible contact. If sufficient cause exists to believe that such allegation is true, the person being investigated shall be given notice that an investigation is ongoing and such person shall be afforded an opportunity to be heard in response to the allegation either by responding in writing or by providing a statement before the Ethics Officer, who shall record by appropriate means such statement for the record. The Ethics Officer shall keep a record of the investigation and shall make a written finding of the results of such investigation and report these findings to the Commissioner.

In addition, a finding by the Ethics Officer that a person has knowingly and willingly violated the law by making an impermissible contact shall result in a determination of non-responsibility and such person and all associated subsidiaries of such person shall not be awarded the procurement contract. The determination of non-responsibility shall also be forwarded to the Commissioner of the Office of General Services (or his or her designee), which by law is required to keep a list of such determinations for public inspection. Determinations of non-responsibility must be disclosed in all future responses to New York State procurements. With few exceptions, no procurement contract shall be awarded to any person who fails to disclose findings of non-responsibility within the previous four years.

SAMPLE FORMS

SECTION 1

NYS Office of Parks, Recreation and Historic Preservation
Saratoga/Capital District Region, Hudson Valley District

REQUEST FOR INFORMATION (RFI)
OPR-103

Project: Camp Junior on Lake Tiorati - Phase 3

Contract No.: D00_____

Request From:

Reply Email Address:

Email Request to: Daniel Neary / daniel.neary@parks.ny.gov

Request Number:

Date:

Spec Section No.:

Drawing No:

Remarks:

Question: Click below and enter text.

Answer: Click below and enter text.

Harriman State Park
PA-TI-2023-001 - Camp Junior on Lake Tiorati - Phase 3

Pre-Bid Meeting Registration Form

I, We [Click here to enter Names and Titles of the Attendees.](#)

Of [Click here to enter The Companies Name .](#)

[Click here to enter Additional Attendees if more space is needed, otherwise space bar here.](#)

[Click here to enter Additional Attendees if more space is needed, otherwise space bar here.](#)

[Click here to enter Company Address.](#)

[Click here to enter Phone Number\(s\) .](#)

[Click here to enter Fax Number.](#)

[Click here to enter Contact Email Address.](#)

Will attend the pre-bid site orientation meeting slated for Camp Junior on Lake Tiorati - Phase 3
at 11:00 A.M. on Tuesday, June 20, 2023

In the area of Harriman State Park - as described within the Contract Documents

Please Email your response to:

Attention: Daniel Neary, RA

Daniel.Neary@parks.ny.gov

SAMPLE FORMS

SECTION 2

**NEW YORK STATE
OFFICE OF PARKS, RECREATION AND HISTORIC PRESERVATION**

**SAMPLE AGREEMENT – PROVIDED HERE FOR INFORMATIONAL
PURPOSES ONLY**

This Agreement made by and between the State of New York, acting by and through the Office of Parks, Recreation and Historic Preservation, hereinafter referred to as the "Office" or the "State" and _____ hereinafter referred to as the "Contractor".

W I T N E S S E T H

1) The Contractor agrees to perform the Work in accordance with the Contract Document which is incorporated herein

**PROJECT NAME
STATE PARK
Contract # D00XXXX**

2) The Contractor agrees to complete the Work no later than **XXX days after contract is approved by the NYS Comptroller's Office.**

3) The Contractor agrees, in the event the Contractor fails to complete all the work on time, to pay the Office liquidated damages as per the General Conditions, Article 14.10, for each day of delay in the physical completion of the Work.

4) The Office agrees to pay the Contractor in accordance with the Contract Documents and in consideration of the completion of the Work, as follows:

IN WORDS:

IN NUMBERS:

5) Goals for the participation of minority group members and women on this project shall be in accordance to the approved utilization plan for this project.

CONTRACT SIGNATURE PAGE

PARKS certifies that copies of this signature page with original signatures will be attached to all other exact copies of the contract.

IN WITNESS WHEREOF, PARKS and the CONTRACTOR have executed this agreement on the date and year indicated.

NEW YORK STATE OFFICE OF PARKS,
RECREATION AND HISTORIC PRESERVATION

Date By: _____
Jeffrey McDonald
Title: Deputy Commissioner for Capital Programs

Date By: _____
(signature)
CONTRACTOR

Name: _____
(print)

Title: _____
(print)

Federal ID Number: _____

Approved as to Form:

ATTORNEY GENERAL

Thomas P. DiNapoli
State Comptroller

By: _____

By: _____

Date: _____

Date: _____

- Contractor's signature must be notarized on the following page.

CONTRACTOR'S SIGNATURE MUST BE NOTARIZED. USE EITHER THE
INDIVIDUAL, PARTNERSHIP, OR CORPORATION FORM, AS APPROPRIATE

INDIVIDUAL

STATE OF NEW YORK)
) SS.:
COUNTY OF)

On this day of , 2021, before me personally came
 , to me known and known to me to be the person described in and who
executed the foregoing instrument, and he or she acknowledged to me that he or she
executed the same.

Notary Public

PARTNERSHIP

STATE OF NEW YORK)
) SS.:
COUNTY OF)

On this day of , 2021, before me personally came
 , to me known and known to me to be the person who executed the
above instrument, who, being duly sworn by me, did for himself or herself depose and
say that he or she is a member of the firm of , consisting of himself or
herself and , and that he or she executed the
foregoing instrument in the firm name
of , had authority to sign same, and did duly acknowledge
to me that he or she executed the same as the act and deed of said firm for the uses
and purposes mentioned therein.

Notary Public

CORPORATION

STATE OF NEW YORK)
) SS.:
COUNTY OF)

On this day of , 2021, before me personally came
 , to me known, who being by me duly sworn, did depose and say that
he or she is the of ,
the corporation described in and which executed the foregoing instrument; that he or
she has been duly authorized by the Board of Directors of said corporation to execute
the foregoing instrument on behalf of said corporation and that he or she signed his or
her name thereto by order of said corporation for the purposes and uses therein
described.

Notary Public

SAMPLE

CONTRACT SUBMITTALS CHECKLIST

(PROVIDED IN THIS PROJECT MANUAL FOR ALL BIDDERS TO READ – ULTIMATELY THE SELECTED LOW BIDDER WILL HAVE TO MAKE THESE SUBMISSIONS)

It is very important that you adhere to the timelines for submittals as noted in Item 1

1. After the NYS Office of Parks, Recreation and Historic Preservation has issued the selected low bidder a Notice of Intent to Award Letter – the following submittals shall be completed and sent to the designated OPRHP contact **within 10 calendar days**:

- NYS Vendor Responsibility Questionnaire (CCA-2) – complete all sections
- **MWBE/SDVOB Utilization Plan – MWBE/SDVOB Utilization Plan must be approved by NYS OPRHP's Diversity Compliance Unit, prior to any other contract submissions on this project. Please adhere to the time submission listed above.**
- **New York State now requires all contractors/vendors who do business with or in New York State to be registered with the NY Office of the State Comptroller. If you are not currently registered, please complete the enclosed Substitute W-9 and mail immediately and directly to OSC.**
- 1 original hardcopy of the Agreement – signed and notarized. Notary acknowledgement date may be on (or after, if necessary) signature date.
- EEO Policy Statement (contracts over \$25,000)
- Certificate of Insurance, Workers Compensation Certificate and NYS Disability Benefit Certificate
- 1 original hardcopy of the Performance Bond – Contractor's signature and Surety's signature must be notarized, and each bond must have a separate original notary page. The construction date must match the agreement signature date, while the bond date and notary dates can be on or after the construction/agreement date. Bonds must include Surety's Financial Statement and Power of Attorney.
- 1 original hardcopy of the Labor and Material Bond – Contractor's signature and Surety's signature must be notarized, and each bond must have a separate original notary page. The construction date must match the agreement signature date, while the bond date and notary dates can be on or after the construction/agreement date. Bonds must include Surety's Financial Statement and Power of Attorney.

2. After the Contract has been approved by NYS OSC, the Contractor shall submit the following:

- Detailed Estimate
- Project Schedule
- Schedule of Submittals
- Summary of Subcontractors
- Submit a "Request for Information", form OPR-103, whenever a written clarification of an issue is required.

PAYMENT FORM CHECKLIST

- A. 1. With each monthly payment application, the contractor shall submit the following:
- First payment application must include copies of all 10 Hour OSHA Certification for all employees on certified payrolls, regardless if they are a prime contractor or subcontractors. Payment Application cannot be submitted for payment without certifications on file in the Regional Engineering Office.
 - Certified Payrolls
 - Once payment is received, MWBE/SDVOB payment audit must be completed in the NYS Contracting System.
2. Monthly payments shall be for all work completed in that month.
- B. With the final payment application, the contractor shall submit the following:
- Certified Payrolls
 - Contractor's Prevailing Rate Certification
 - Subcontractor's Prevailing Rate Certification
 - MWBE/SDVOB Final Payment Report, if applicable

Instructions for Submitting the Workforce Utilization Report

The Workforce Utilization Report (“Report”) is to be submitted on a monthly basis for construction contracts, and a quarterly basis for all other contracts, during the life of the contract to report the actual workforce utilized in the performance of the contract broken down by job title. When the workforce utilized in the performance of the contract can be separated out from the contractor’s and/or subcontractor’s total workforce, the contractor and/or subcontractor shall submit a Report of the workforce utilized on the contract. When the workforce to be utilized on the contract cannot be separated out from the contractor’s and/or subcontractor’s total workforce, information on the contractor’s and/or subcontractor’s total workforce may be included in the Report.

Reports are to be submitted electronically, using the provided Report worksheet, to MWBE@parks.ny.gov within ten (10) days following the end of each month or quarter, whichever is applicable.

Instructions for Completing the Workforce Utilization Report

1. **REPORTING ENTITY:** Check off the appropriate box to indicate if the entity completing the Report is the contractor or a subcontractor.
2. **FEDERAL EMPLOYER IDENTIFICATION NUMBER:** Enter the Federal Employer Identification Number (FEIN) assigned by the IRS. Contractors utilizing their social security number in lieu of an FEIN should leave this field blank.
3. **CONTRACTOR NAME and CONTRACTOR ADDRESS:** Enter the primary business address for the entity completing the Report.
4. **CONTRACT NUMBER:** Enter the number of the contract to which the Report applies.
5. **REPORTING PERIOD:** Check off the box that corresponds to the applicable quarterly or monthly reporting period for this Report. Only select one box.
6. **WORKFORCE IDENTIFIED IN REPORT:** Check off the appropriate box to indicate if the workforce being reported is just for the contract or the contractor’s or subcontractor’s total workforce.
7. **OCCUPATION CLASSIFICATIONS and SOC JOB TITLE:** Select the occupation classification and job title that best describes each group of employees performing work on the state contract under columns A and B.
8. **EEO JOB TITLE and SOC CODE:** These fields will populate automatically based upon the Occupation Classifications and SOC Job Titles selected. Do not modify the results generated in these fields.
9. **NUMBER OF EMPLOYEES and NUMBER OF HOURS:** Enter the number of employees and total number of hours worked by such employees for each job title under the columns corresponding to the gender and racial/ethnic groups with which the employees most closely identify.
10. **TOTAL COMPENSATION:** Enter the total compensation paid to all employees for each job code, and each gender and racial/ethnic group, identified in the Report. Contractors and subcontractors should report only compensation for work on the contract paid to employees during the period covered by the Report. Compensation should include only sums which must be reported in Box 1 of IRS Form W2.
11. **PREPARER’S INFORMATION:** Enter the name and title for the person completing the form, enter the date upon which the Report was completed, and check the box accepting the name entered into the Report as the digital signature of the preparer.

Race/Ethnic Identification

Race/ethnic designations do not denote scientific definitions of anthropological origins. For the purposes of this Report, an employee must be included in the group with which he or she most closely identifies. No person may be counted in more than one race/ethnic group. In determining an employee's race or ethnicity, a contractor may rely upon an employee's self-identification, employment records, or, in cases where an employee refuses to identify his or her race or identity, observer identification. The race/ethnic categories for this Report are:

- **WHITE** (Not of Hispanic origin) All persons having origins in any of the original peoples of Europe, North Africa, or the Middle East.
- **BLACK/AFRICAN AMERICAN** a person, not of Hispanic origin, who has origins in any of the black racial groups of the original peoples of Africa.
- **HISPANIC/LATINO** a person of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish culture or origin, regardless of race.
- **ASIAN, NATIVE HAWAIIAN OR OTHER PACIFIC ISLANDER** a person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent or the Pacific Islands.
- **NATIVE AMERICAN/ALASKAN NATIVE** a person having origins in any of the original peoples of North America, and who maintains cultural identification through tribal affiliation or community recognition.

Resources

If you have questions regarding these requirements, are unsure of the appropriate job titles to include in your Report, or otherwise require assistance in preparing or submitting the Report, please contact Ashley Arnold, Minority Business Specialist II (Ashley.Arnold@parks.ny.gov).

ARTICLE 15A
EQUAL EMPLOYMENT OPPORTUNITY POLICY STATEMENT

It is the policy of the _____ to provide equal employment opportunity to all people without regard to race, color, sex, religion, creed, age, national origin, disability, sexual preference or Vietnam Era Veteran status. As head of this firm, I am personally committed to assuring that the _____ will act affirmatively to develop avenues of entry and mobility for minorities, women, individuals with disabilities and Vietnam Era Veterans through the following activities:

- ≠ Development of programmatic approaches to the elimination of all unjust exclusionary employment practices, policies and consequences;
- ≠ Development of educational and training programs for all employees, with emphasis on our goals for upgrading minorities, women, individuals with disabilities and Vietnam Era Veterans;
- ≠ Development of personnel practices, policies and career ladders to assist and encourage upward mobility of employees restricted to lower levels;
- ≠ Development of mechanisms for swift and judicious resolution of complaints of discrimination consistent with our policy and other applicable statutes; and
- ≠ Provision of reasonable accommodations to enable qualified individuals with disabilities to enjoy equal employment opportunities and equal terms, conditions and privileges of employment.

To effectuate this policy, a plan has been designed which conforms with all relevant Federal and State non-discrimination laws and regulations including but not limited to: The Civil Rights Act of 1964, as amended; the Rehabilitation Act of 1973, as amended; the Americans with Disabilities Act; the Vietnam Era Veteran's Readjustment Act of 1974; and the New York State Human Rights Law. The plan applies to all job classifications and titles in the (name of contractor) _____ jurisdiction. It governs all (name of contractor) _____ employment policies, practices and actions including, but not limited to: recruitment, hiring, discipline, rate of pay or other compensation, advancement, reclassification, reallocation, promotion, demotion, discharge and employee benefits. The appropriate person/office will be provided with all available resources necessary for the execution of its program responsibilities. Moreover, all managers, supervisors and employees must make consistently diligent efforts to implement this policy in day-to-day program and employment decisions. Affirmative Action considerations will be an integral part of all organizational activities performed in the furtherance of our mission and in meeting our responsibilities to New York State's citizens.

(Print/Type CEO Name)

(CEO Signature & Date)

General instructions: For contracts \$250,000 or greater, all Offerors and each subcontractor identified in the bid or proposal must complete an EEO Staffing Plan and submit it at the time of

Instructions for completing:

1. Enter the contract number that this report applies to along with the name and address of the Offeror.
2. Check off the appropriate box to indicate if the Offeror completing the report is the contractor or a subcontractor.
3. Check off the appropriate box to indicate work force to be utilized on the contract or the Offerors' total work force.
4. Enter the total work force by EEO job category.
5. Break down the anticipated total work force by gender and enter under the heading 'Work force by Gender'
6. Break down the anticipated total work force by race/ethnic identification and enter under the heading 'Work force by Race/Ethnic Identification'. Contact the Permissible contact(s) for the solicitation if you have any questions.
7. Enter information on disabled or veterans included in the anticipated work force under the appropriate headings.
8. Enter the name, title, phone number and email address for the person completing the form. Sign and date the form in the designated boxes.

RACE/ETHNIC IDENTIFICATION

thropological origins. For the purposes of this form, an employee may be included in the group to which he or she appears to belong, identifies with, or is regarded in the community as belongin

WHITE

(Not of Hispanic origin) All persons having origins in any of the original peoples of Europe, North Africa, or the Middle East.

44

BLACK

a person, not of Hispanic origin, who has origins in any of the black racial groups of the original peoples of Africa.

HISPANIC

a person of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish culture or origin, regardless of race.

ASIAN & PACIFIC ISLANDER

a person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent or the Pacific Islands.

NATIVE INDIAN (NATIVE AMERICAN/ ALASKAN

a person having origins in any of the original peoples of North America, and who maintains cultural identification through tribal affiliation or community recognition.

OTHER CATEGORIES

DISABLED INDIVIDUAL

- any person who:
- has a physical or mental impairment that substantially limits one or more major life activity(ies)
 - has a record of such an impairment; or
 - is regarded as having such an impairment.

VIETNAM ERA VETERAN

- a veteran who served at any time between and including January 1, 1963 and May 7, 1975.

GENDER

Male or Female

Submit with utilization plan for contracts \$250,000 or greater – Instructions on Tab 2

Contract Number:	
-------------------------	--

Offeror's Name:		Select Reporting Entity:		Prime Contractor
Offeror's Street Address				Subcontractor
City, State, Zip				

EEO Job Category	Total Work Force	Workforce by Gender		Workforce by Race/Ethnic Identification							Disabled (M) (F)		Veteran (M) (F)	
		Total Male (M)	Total Female (F)	White (M) (F)	Black (M) (F)	Hispanic (M) (F)	Asian (M) (F)	Native American (M) (F)						
Officials/Administrators	0													
Professionals	0													
Technicians	0													
Sales Workers	0													
Office/Clerical	0													
Craft Workers	0													
Laborers	0													
Service Workers	0													
Temporary Apprentices	0													
Totals	0	0	0	0	0	0	0	0	0	0	0	0	0	0

Signature of Preparer

X

Telephone number of preparer:
Email Address of preparer:

Name & Title of Preparer:

NEW YORK STATE VENDOR RESPONSIBILITY QUESTIONNAIRE FOR-PROFIT CONSTRUCTION (CCA-2)

You have selected the For-Profit Construction questionnaire, commonly known as the “CCA-2,” which may be printed and completed in this format or, **for your convenience, may be completed online using the [New York State VendRep System](#).**

COMPLETION & CERTIFICATION

The person(s) completing the questionnaire must be knowledgeable about the vendor’s business and operations. An owner or official must certify the questionnaire and the signature must be notarized.

NEW YORK STATE VENDOR IDENTIFICATION NUMBER (VENDOR ID)

The Vendor ID is a ten-digit identifier issued by New York State when the vendor is registered on the Statewide Vendor File. This number must now be included on the questionnaire. If the business entity has not obtained a Vendor ID, contact the OSC Help Desk at ciohelpdesk@osc.state.ny.us or call 866-370-4672.

DEFINITIONS

All underlined terms are defined in the “New York State Vendor Responsibility Definitions List,” found at <http://www.osc.state.ny.us/vendrep/documents/questionnaire/definitions.pdf>. These terms may not have their ordinary, common or traditional meanings. Each vendor is strongly encouraged to read the respective definitions for any and all underlined terms. By submitting this questionnaire, the vendor agrees to be bound by the terms as defined in the "New York State Vendor Responsibility Definitions List" existing at the time of certification.

RESPONSES

Every question must be answered. Each response must provide all relevant information which can be obtained within the limits of the law. However, information regarding a determination or finding made in error which was subsequently corrected or overturned, and/or was withdrawn by the issuing government entity, is not required. Individuals and Sole Proprietors may use a Social Security Number but are encouraged to obtain and use a federal Employer Identification Number (EIN).

NEW YORK STATE VENDOR RESPONSIBILITY QUESTIONNAIRE FOR-PROFIT CONSTRUCTION (CCA-2)

BUSINESS ENTITY INFORMATION				
<u>Legal Business Name</u>		<u>EIN</u> _____		
Address of the <u>Principal Place of Business</u> (street, city, state, zip code)		<u>New York State Vendor Identification Number</u>		
		Telephone ext.		Fax
		Website		
Authorized Contact for this Questionnaire				
Name		Telephone ext.		Fax
Title		Email		
Additional <u>Business Entity</u> Identities: If applicable, list any other <u>DBA</u> , <u>Trade Name</u> , <u>Former Name</u> , Other Identity, or <u>EIN</u> used in the last five (5) years, the state or county where filed and the status (active or inactive).				
Type	Name	EIN	State or County where filed	Status

I. BUSINESS CHARACTERISTICS		
1.0 <u>Business Entity</u> Type – Check appropriate box and provide additional information:		
a) <input type="checkbox"/> <u>Corporation</u> (including <u>PC</u>)	Date of Incorporation	
b) <input type="checkbox"/> <u>Limited Liability Company</u> (LLC or PLLC)	Date Organized	
c) <input type="checkbox"/> <u>Limited Liability Partnership</u>	Date of Registration	
d) <input type="checkbox"/> <u>Limited Partnership</u>	Date Established	
e) <input type="checkbox"/> <u>General Partnership</u>	Date Established	County (if formed in NYS)
f) <input type="checkbox"/> <u>Sole Proprietor</u>	How many years in business?	
g) <input type="checkbox"/> Other	Date Established	
If Other, explain:		
1.1 Was the <u>Business Entity</u> formed in New York State?		<input type="checkbox"/> Yes <input type="checkbox"/> No
If “No,” indicate jurisdiction where the <u>Business Entity</u> was formed:		
<input type="checkbox"/> United States	State	
<input type="checkbox"/> Other	Country	

NEW YORK STATE VENDOR RESPONSIBILITY QUESTIONNAIRE FOR-PROFIT CONSTRUCTION (CCA-2)

I. BUSINESS CHARACTERISTICS			
1.2 Is the <u>Legal Business Entity</u> publicly traded?			<input type="checkbox"/> Yes <input type="checkbox"/> No
If "Yes," provide the <u>CIK code</u> or Ticker Symbol:			
1.3 Is the <u>Business Entity</u> currently <u>registered to do business in New York State</u> ?			<input type="checkbox"/> Yes <input type="checkbox"/> No
<i>Note: Select "Not Required" if the Business Entity is a Sole Proprietor or General Partnership</i>			<input type="checkbox"/> Not Required
If "No," explain why the <u>Business Entity</u> is not required to be <u>registered to do business in New York State</u> :			
1.4 Is the responding <u>Business Entity</u> a <u>Joint Venture</u> ? Note: If the submitting <u>Business Entity</u> is a <u>Joint Venture</u> , also submit a separate questionnaire for each <u>Business Entity</u> comprising the <u>Joint Venture</u> .			<input type="checkbox"/> Yes <input type="checkbox"/> No
1.5 If the <u>Business Entity's</u> <u>Principal Place of Business</u> is not in New York State, does the <u>Business Entity</u> maintain an office in New York State?			<input type="checkbox"/> Yes <input type="checkbox"/> No
<i>(Select "N/A" if <u>Principal Place of Business</u> is in New York State.)</i>			<input type="checkbox"/> N/A
If "Yes," provide the address and telephone number for one office located in New York State.			
1.6 Is the Business Entity a New York State certified <u>Minority-Owned Business Enterprise</u> , or <u>Women-Owned Business Enterprise</u> , or <u>New York State Small Business</u> , or federally certified <u>Disadvantaged Business Enterprise</u> ?			<input type="checkbox"/> Yes <input type="checkbox"/> No
If "Yes," check all that apply: <input type="checkbox"/> New York State certified <u>Minority-Owned Business Enterprise</u> (MBE) <input type="checkbox"/> New York State certified <u>Women-Owned Business Enterprise</u> (WBE) <input type="checkbox"/> <u>New York State Small Business</u> <input type="checkbox"/> Federally certified <u>Disadvantaged Business Enterprise</u> (DBE)			
1.7 Identify each person or business entity that is, or has been within the past five (5) years, <u>Principal Owner</u> of 5.0% or more of the firm's shares; a Business Entity Official; or one of the five largest shareholders, if applicable. <i>(Attach additional pages if necessary.)</i> <u>Joint Ventures</u> : Provide information for all firms involved.			
Name <i>(For each person, include middle initial)</i>	Title	Percentage of ownership (Enter 0%, if not applicable)	Employment status with the firm
			<input type="checkbox"/> Current <input type="checkbox"/> Former
			<input type="checkbox"/> Current <input type="checkbox"/> Former
			<input type="checkbox"/> Current <input type="checkbox"/> Former
			<input type="checkbox"/> Current <input type="checkbox"/> Former

NEW YORK STATE VENDOR RESPONSIBILITY QUESTIONNAIRE FOR-PROFIT CONSTRUCTION (CCA-2)

II. AFFILIATE and JOINT VENTURE RELATIONSHIPS		
2.0 Are there any other <u>construction</u> -related firms in which, now or in the past five years, the submitting <u>Business Entity</u> or any of the individuals or business entities listed in question 1.7 either owned or owns 5.0% or more of the shares of, or was or is one of the five largest shareholders or a director, officer, partner or proprietor of said other firm? <i>(Attach additional pages if necessary.)</i>		<input type="checkbox"/> Yes <input type="checkbox"/> No
Firm/Company Name	Firm/Company EIN (If available)	Firm/Company's Primary Business Activity
Firm/Company Address		
Explain relationship with the firm and indicate percent of ownership, if applicable (enter N/A, if not applicable):		
Are there any shareholders, directors, officers, owners, partners or proprietors that the submitting <u>Business Entity</u> has in common with this firm?		<input type="checkbox"/> Yes <input type="checkbox"/> No
Individual's Name <i>(Include middle initial)</i>	Position/Title with Firm/Company	
2.1 Does the <u>Business Entity</u> have any <u>construction</u> -related <u>affiliates</u> not identified in the response to question 2.0 above? <i>(Attach additional pages if necessary.)</i>		<input type="checkbox"/> Yes <input type="checkbox"/> No
Affiliate Name	Affiliate EIN (If available)	Affiliate's Primary Business Activity
Affiliate Address		
Explain relationship with the affiliate and indicate percent of ownership, if applicable <i>(enter N/A, if not applicable)</i> :		
Are there any shareholders, directors, officers, owners, partners or proprietors that the submitting Business Entity has in common with this affiliate?		<input type="checkbox"/> Yes <input type="checkbox"/> No
Individual's Name <i>(Include middle initial)</i>	Position/Title with Firm/Company	
2.2 Has the <u>Business Entity</u> participated in any <u>construction-related Joint Ventures</u> within the past three (3) years? <i>(Attach additional pages if necessary.)</i>		<input type="checkbox"/> Yes <input type="checkbox"/> No
Joint Venture Name	Joint Venture EIN (If available)	Identify parties to the Joint Venture

NEW YORK STATE VENDOR RESPONSIBILITY QUESTIONNAIRE FOR-PROFIT CONSTRUCTION (CCA-2)

III. CONTRACT HISTORY

3.0 Has the Business Entity completed any construction contracts? ☐ Yes ☐ No

If "Yes," list the ten most recent construction contracts the Business Entity has completed using Attachment A – Completed Construction Contracts, found at www.osc.state.ny.us/vendrep/documents/questionnaire/ac3294s.doc.

If less than ten, include most recent subcontracts on projects up to that number.

3.1 Does the Business Entity currently have uncompleted construction contracts? ☐ Yes ☐ No

If "Yes," list all current uncompleted construction contracts by using Attachment B – Uncompleted Construction Contracts, found at www.osc.state.ny.us/vendrep/documents/questionnaire/ac3295s.doc.

Note: Ongoing projects must be included.

IV. INTEGRITY – CONTRACT BIDDING

Within the past five (5) years, has the Business Entity, an affiliate, or any predecessor company or entity:

4.0 Been suspended or debarred from any government contracting process or been disqualified on any government procurement? ☐ Yes ☐ No

4.1 Been subject to a denial or revocation of a government prequalification? ☐ Yes ☐ No

4.2 Had any bid rejected by a government entity for lack of qualifications, responsibility or because of the submission of an informal, non-responsive or incomplete bid? ☐ Yes ☐ No

4.3 Had a proposed subcontract rejected by a government entity for lack of qualifications, responsibility or because of the submission of an informal, non-responsive or incomplete bid? ☐ Yes ☐ No

4.4 Had a low bid rejected on a government contract for failure to make good faith efforts on any Minority-Owned Business Enterprise, Women-Owned Business Enterprise or Disadvantaged Business Enterprise goal or statutory affirmative action requirements on a previously held contract? ☐ Yes ☐ No

4.5 Agreed to a voluntary exclusion from bidding/contracting with a government entity? ☐ Yes ☐ No

4.6 Initiated a request to withdraw a bid submitted to a government entity or made any claim of an error on a bid submitted to a government entity? ☐ Yes ☐ No

For each "Yes," provide an explanation of the issue(s), the Business Entity involved, the relationship to the submitting Business Entity, the government entity involved, project(s), relevant dates, any remedial or corrective action(s) taken and the current status of the issue(s). Provide answer(s) below or attach additional sheets with numbered responses.

V. INTEGRITY – CONTRACT AWARD

Within the past five (5) years, has the Business Entity, an affiliate, or any predecessor company or entity:

5.0 Defaulted on or been suspended, cancelled or terminated for cause on any contract? ☐ Yes ☐ No

5.1 Been subject to an administrative proceeding or civil action seeking specific performance or restitution (except any disputed work proceeding) in connection with any government contract? ☐ Yes ☐ No

5.2 Entered into a formal monitoring agreement, consent decree or stipulation settlement as specified by, or agreed to with, any government entity? ☐ Yes ☐ No

5.3 Had its surety called upon to complete any contract whether government or private sector? ☐ Yes ☐ No

5.4 Forfeited all or part of a standby letter of credit in connection with any government contract? ☐ Yes ☐ No

NEW YORK STATE VENDOR RESPONSIBILITY QUESTIONNAIRE FOR-PROFIT CONSTRUCTION (CCA-2)

V. INTEGRITY – CONTRACT AWARD

Within the past five (5) years, has the Business Entity, an affiliate, or any predecessor company or entity:

For each “Yes,” provide an explanation of the issue(s), the Business Entity involved, the relationship to the submitting Business Entity, the government entity/owners involved, project(s), contract number(s), relevant dates, any remedial or corrective action(s) taken and the current status of the issue(s). Provide answer(s) below or attach additional sheets with numbered responses.

VI. CERTIFICATIONS/LICENSES

Within the past five (5) years, has the Business Entity, an affiliate, or any predecessor company or entity:

- | | |
|--|--|
| 6.0 Had a revocation or <u>suspension</u> of any business or professional permit and/or license? | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| 6.1 Had a denial, decertification, revocation or forfeiture of New York State certification of <u>Minority-Owned Business Enterprise</u> , <u>Women-Owned Business Enterprise</u> or a federal certification of <u>Disadvantaged Business Enterprise</u> status, for other than a change of ownership? | <input type="checkbox"/> Yes <input type="checkbox"/> No |

For each “Yes,” provide an explanation of the issue(s), the Business Entity involved, the relationship to the submitting Business Entity, the government entity involved, relevant dates, any remedial or corrective action(s) taken and the current status of the issue(s). Provide answer(s) below or attach additional sheets with numbered responses.

VII. LEGAL PROCEEDINGS/GOVERNMENT INVESTIGATIONS

Within the past five (5) years, has the Business Entity, an affiliate, or any predecessor company or entity:

- | | |
|--|--|
| 7.0 Been the subject of a criminal <u>investigation</u> , whether open or closed, or an indictment for any business-related conduct constituting a crime under local, state or <u>federal</u> law? | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| 7.1 Been the subject of:
(i.) An indictment, grant of immunity, <u>judgment</u> or conviction (including entering into a plea bargain) for conduct constituting a crime; or
(ii.) Any criminal <u>investigation</u> , felony indictment or conviction concerning the formation of, or any business association with, an allegedly false or fraudulent <u>Minority-Owned Business Enterprise</u> , <u>Women-Owned Business Enterprise</u> , or a <u>Disadvantaged Business Enterprise</u> ? | <input type="checkbox"/> Yes <input type="checkbox"/> No

<input type="checkbox"/> Yes <input type="checkbox"/> No |
| 7.2 Received any <u>OSHA</u> citation, which resulted in a final determination classified as <u>serious</u> or <u>willful</u> ? | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| 7.3 Had a <u>government entity</u> find a willful prevailing wage or supplemental payment violation? | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| 7.4 Had a New York State Labor Law violation deemed willful? | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| 7.5 Entered into a consent order with the New York State Department of Environmental Conservation, or a <u>federal</u> , state or local government enforcement determination involving a violation of <u>federal</u> , state or local environmental laws? | <input type="checkbox"/> Yes <input type="checkbox"/> No |

NEW YORK STATE VENDOR RESPONSIBILITY QUESTIONNAIRE FOR-PROFIT CONSTRUCTION (CCA-2)

VII. LEGAL PROCEEDINGS/GOVERNMENT INVESTIGATIONS

Within the past five (5) years, has the Business Entity, an affiliate, or any predecessor company or entity:

<p>7.6 Other than previously disclosed, been the subject of any <u>citations</u>, notices or violation orders; a pending administrative hearing, proceeding or determination of a violation of:</p> <ul style="list-style-type: none"> • <u>Federal</u>, state or local health laws, rules or regulations; • <u>Federal</u>, state or local environmental laws, rules or regulations; • Unemployment insurance or workers compensation coverage or <u>claim</u> requirements; • Any labor law or regulation, which was deemed willful; • Employee Retirement Income Security Act (ERISA); • <u>Federal</u>, state or local human rights laws; • <u>Federal</u>, state or local security laws? 	<input type="checkbox"/> Yes <input type="checkbox"/> No
--	--

For each "Yes," provide an explanation of the issue(s), the Business Entity involved, the relationship to the submitting Business Entity, the government entity involved, relevant dates, any remedial or corrective action(s) taken and the current status of the issue(s). Provide answer(s) below or attach additional sheets with numbered responses.

Note: Information regarding a determination or finding made in error, which was subsequently corrected or overturned, and/or was withdrawn by the issuing government entity, is not required.

VIII. LEADERSHIP INTEGRITY

If the Business Entity is a Joint Venture Entity, answer "N/A - Not Applicable" to questions in this section.

Within the past five (5) years has any individual previously identified or any individual currently or formerly having the authority to sign, execute or approve bids, proposals, contracts or supporting documentation on behalf of the Business Entity with any government entity been:

<p>8.0 <u>Sanctioned</u> relative to any business or professional permit and/or license?</p>	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
<p>8.1 <u>Suspended</u>, <u>debarred</u> or <u>disqualified</u> from any <u>government contracting process</u>?</p>	
<p>8.2 The subject of a criminal <u>investigation</u>, whether open or closed, or an indictment for any business-related conduct constituting a crime under local, state or <u>federal</u> law?</p>	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
<p>8.3 Charged with a misdemeanor or felony, indicted, granted immunity, convicted of a crime or subject to a judgment for:</p> <ul style="list-style-type: none"> (i.) Any business-related activity, including but not limited to fraud, coercion, extortion, bribe or bribe-receiving, giving or accepting unlawful gratuities, immigration or tax fraud, racketeering, mail fraud, wire fraud, price-fixing or collusive bidding; or (ii.) Any crime, whether or not business-related, the underlying conduct of which related to truthfulness, including but not limited to the filing of false documents or false sworn statements, perjury or larceny 	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A

For each "Yes," provide an explanation of the issue(s), the individual involved, the relationship to the submitting Business Entity, the government entity involved, relevant dates, any remedial or corrective action(s) taken and the current status of the issue(s). Provide answer(s) below or attach additional sheets with numbered responses.

NEW YORK STATE VENDOR RESPONSIBILITY QUESTIONNAIRE FOR-PROFIT CONSTRUCTION (CCA-2)

IX. FINANCIAL AND ORGANIZATIONAL CAPACITY			
9.0 Within the past five (5) years, has the <u>Business Entity</u> or any <u>affiliate</u> received any <u>formal unsatisfactory performance assessment(s)</u> from any <u>government entity</u> on any contract?			<input type="checkbox"/> Yes <input type="checkbox"/> No
<i>If "Yes," provide an explanation of the issue(s), the <u>Business Entity</u> involved, the relationship to the submitting <u>Business Entity</u>, the <u>government entity</u> involved, relevant dates, any remedial or corrective action(s) taken and the current status of the issue(s). Provide answer below or attach additional sheets with numbered responses.</i>			
9.1 Within the past five (5) years, has the <u>Business Entity</u> or any <u>affiliate</u> had any <u>liquidated damages</u> assessed over \$25,000?			<input type="checkbox"/> Yes <input type="checkbox"/> No
<i>If "Yes," provide an explanation of the issue(s), the <u>Business Entity</u> involved, the relationship to the submitting <u>Business Entity</u>, relevant dates, the contracting party involved, the amount assessed and the current status of the issue(s). Provide answer below or attach additional sheets with numbered responses.</i>			
9.2 Within the past five (5) years, has the <u>Business Entity</u> or any <u>affiliate</u> had any <u>liens, claims or judgments</u> over \$25,000 filed against the <u>Business Entity</u> which remain undischarged or were unsatisfied for more than 90 days? (Note: Including but not limited to tax warrants or liens. Do not include UCC filings.)			<input type="checkbox"/> Yes <input type="checkbox"/> No
<i>If "Yes," provide an explanation of the issue(s), the <u>Business Entity</u> involved, the relationship to the submitting <u>Business Entity</u>, relevant dates, the Lien holder or Claimants' name(s), the amount of the <u>lien(s)</u> and the current status of the issue(s). Provide answer below or attach additional sheets with numbered responses.</i>			
9.3 In the last seven (7) years, has the <u>Business Entity</u> or any <u>affiliate</u> initiated or been the subject of any bankruptcy proceedings, whether or not closed, or is any bankruptcy proceeding pending?			<input type="checkbox"/> Yes <input type="checkbox"/> No
<i>If "Yes," provide the <u>Business Entity</u> involved, the relationship to the submitting <u>Business Entity</u>, the bankruptcy chapter number, the court name and the docket number. Indicate the current status of the proceedings as "Initiated," "Pending" or "Closed." Provide answer below or attach additional sheets with numbered responses.</i>			
9.4 What is the <u>Business Entity's</u> Bonding Capacity?			
a. Single Project		b. Aggregate (All Projects)	
9.5 List <u>Business Entity's</u> Gross Sales for the previous three (3) Fiscal Years:			
1st Year (Indicate year) Gross Sales	2nd Year (Indicate year) Gross Sales	3rd Year (Indicate year) Gross Sales	
9.6 List <u>Business Entity's</u> Average Backlog for the previous three (3) fiscal years: (Estimated total value of uncompleted work on outstanding contracts)			
1st Year (Indicate year) Amount	2nd Year (Indicate year) Amount	3rd Year (Indicate year) Amount	
9.7 Attach <u>Business Entity's</u> most recent annual <u>financial statement</u> and accompanying notes or complete Attachment C – Financial Information, found at www.osc.state.ny.us/vendrep/documents/questionnaire/ac3296s.xls . (This information must be attached.)			

**NEW YORK STATE VENDOR RESPONSIBILITY QUESTIONNAIRE
FOR-PROFIT CONSTRUCTION (CCA-2)**

X. FREEDOM OF INFORMATION LAW (FOIL)

10.0 Indicate whether any information provided herein is believed to be exempt from disclosure under the Freedom of Information Law (FOIL).

☐ Yes ☐ No

Note: A determination of whether such information is exempt from FOIL will be made at the time of any request for disclosure under FOIL. Attach additional pages if necessary.

If "Yes," indicate the question number(s) and explain the basis for the claim.

NEW YORK STATE VENDOR RESPONSIBILITY QUESTIONNAIRE FOR-PROFIT CONSTRUCTION (CCA-2)

Certification

The undersigned: (1) recognizes that this questionnaire is submitted for the express purpose of assisting New York State government entities (including the Office of the State Comptroller (OSC)) in making responsibility determinations regarding award or approval of a contract or subcontract and that such government entities will rely on information disclosed in the questionnaire in making responsibility determinations; (2) acknowledges that the New York State government entities and OSC may, in their discretion, by means which they may choose, verify the truth and accuracy of all statements made herein; and (3) acknowledges that intentional submission of false or misleading information may result in criminal penalties under State and/or Federal Law, as well as a finding of non-responsibility, contract suspension or contract termination.

The undersigned certifies that he/she:

- is knowledgeable about the submitting Business Entity's business and operations;
- has read and understands all of the questions contained in the questionnaire;
- has not altered the content of the questionnaire in any manner;
- has reviewed and/or supplied full and complete responses to each question;
- to the best of his/her knowledge, information and belief, confirms that the Business Entity's responses are true, accurate and complete, including all attachments, if applicable;
- understands that New York State government entities will rely on the information disclosed in the questionnaire when entering into a contract with the Business Entity; and
- is under an obligation to update the information provided herein to include any material changes to the Business Entity's responses at the time of bid/proposal submission through the contract award notification, and may be required to update the information at the request of the New York State government entities or OSC prior to the award and/or approval of a contract, or during the term of the contract.

Signature of Owner/Official _____

Printed Name of Signatory _____

Title _____

Name of Business _____

Address _____

City, State, Zip _____

Sworn to before me this _____ day of _____, 20__;

_____ Notary Public

**NEW YORK STATE
VENDOR RESPONSIBILITY QUESTIONNAIRE
ATTACHMENT A – COMPLETED CONSTRUCTION CONTRACTS**

Vendor Name:

NYS Vendor ID:

Question 3.0: List the ten most recent construction contracts the Business Entity has completed. If less than ten, include most recent subcontracts on projects up to that number:						
1.	Agency/Owner		Award Date	Amount		Date Completed
	Contact Person		Telephone No.	Designer Architect and /or Design Engineer		
	Contract No.	Prime or Sub	Joint Venture (JV) Name, if applicable		EIN of JV, if applicable	
2.	Agency/Owner		Award Date	Amount		Date Completed
	Contact Person		Telephone No.	Designer Architect and /or Design Engineer		
	Contract No.	Prime or Sub	Joint Venture (JV) Name, if applicable		EIN of JV, if applicable	
3.	Agency/Owner		Award Date	Amount		Date Completed
	Contact Person		Telephone No.	Designer Architect and /or Design Engineer		
	Contract No.	Prime or Sub	Joint Venture (JV) Name, if applicable		EIN of JV, if applicable	
4.	Agency/Owner		Award Date	Amount		Date Completed
	Contact Person		Telephone No.	Designer Architect and /or Design Engineer		
	Contract No.	Prime or Sub	Joint Venture (JV) Name, if applicable		EIN of JV, if applicable	
5.	Agency/Owner		Award Date	Amount		Date Completed
	Contact Person		Telephone No.	Designer Architect and /or Design Engineer		
	Contract No.	Prime or Sub	Joint Venture (JV) Name, if applicable		EIN of JV, if applicable	

**NEW YORK STATE
VENDOR RESPONSIBILITY QUESTIONNAIRE
ATTACHMENT A – COMPLETED CONSTRUCTION CONTRACTS**

Vendor Name:

NYS Vendor ID:

Question 3.0: List the ten most recent construction contracts the Business Entity has completed. If less than ten, include most recent subcontracts on projects up to that number:						
6.	Agency/Owner		Award Date	Amount	Date Completed	
	Contact Person	Telephone No.	Designer Architect and /or Design Engineer			
	Contract No.	Prime or Sub	Joint Venture (JV) Name, if applicable		EIN of JV, if applicable	
7.	Agency/Owner		Award Date	Amount	Date Completed	
	Contact Person	Telephone No.	Designer Architect and /or Design Engineer			
	Contract No.	Prime or Sub	Joint Venture (JV) Name, if applicable		EIN of JV, if applicable	
8.	Agency/Owner		Award Date	Amount	Date Completed	
	Contact Person	Telephone No.	Designer Architect and /or Design Engineer			
	Contract No.	Prime or Sub	Joint Venture (JV) Name, if applicable		EIN of JV, if applicable	
9.	Agency/Owner		Award Date	Amount	Date Completed	
	Contact Person	Telephone No.	Designer Architect and /or Design Engineer			
	Contract No.	Prime or Sub	Joint Venture (JV) Name, if applicable		EIN of JV, if applicable	
10.	Agency/Owner		Award Date	Amount	Date Completed	
	Contact Person	Telephone No.	Designer Architect and /or Design Engineer			
	Contract No.	Prime or Sub	Joint Venture (JV) Name, if applicable		EIN of JV, if applicable	

**NEW YORK STATE
VENDOR RESPONSIBILITY QUESTIONNAIRE
ATTACHMENT B – UNCOMPLETED CONSTRUCTION CONTRACTS**

Vendor Name:

NYS Vendor ID:

Question 3.1: List all current uncompleted construction contracts:									
1.	Agency/Owner		Telephone No.		Designer Architect and /or Design Engineer			Award Date	Completion Date
	Contact Person								
	Contract No.	Prime or Sub	Joint Venture (JV) Name, if applicable				EIN of JV, if applicable		
			Total Contract Amount	Amount Sublet to others	Uncompleted Amount				
2.	Agency/Owner		Telephone No.		Designer Architect and /or Design Engineer			Award Date	Completion Date
	Contact Person								
	Contract No.	Prime or Sub	Joint Venture (JV) Name, if applicable				EIN of JV, if applicable		
			Total Contract Amount	Amount Sublet to others	Uncompleted Amount				
3.	Agency/Owner		Telephone No.		Designer Architect and /or Design Engineer			Award Date	Completion Date
	Contact Person								
	Contract No.	Prime or Sub	Joint Venture (JV) Name, if applicable				EIN of JV, if applicable		
			Total Contract Amount	Amount Sublet to others	Uncompleted Amount				
4.	Agency/Owner		Telephone No.		Designer Architect and /or Design Engineer			Award Date	Completion Date
	Contact Person								
	Contract No.	Prime or Sub	Joint Venture (JV) Name, if applicable				EIN of JV, if applicable		
			Total Contract Amount	Amount Sublet to others	Uncompleted Amount				

**NEW YORK STATE
VENDOR RESPONSIBILITY QUESTIONNAIRE
ATTACHMENT B – UNCOMPLETED CONSTRUCTION CONTRACTS**

Vendor Name:

NYS Vendor ID:

Question 3.1: List all current uncompleted construction contracts:									
5.	Agency/Owner			Award Date		Completion Date			
	Contact Person	Telephone No.	Designer Architect and /or Design Engineer						
	Contract No.	Prime or Sub	Joint Venture (JV) Name, if applicable		EIN of JV, if applicable				
			Total Contract Amount	Amount Sublet to others	Uncompleted Amount				
6.	Agency/Owner			Award Date		Completion Date			
	Contact Person	Telephone No.	Designer Architect and /or Design Engineer						
	Contract No.	Prime or Sub	Joint Venture (JV) Name, if applicable		EIN of JV, if applicable				
			Total Contract Amount	Amount Sublet to others	Uncompleted Amount				
7.	Agency/Owner			Award Date		Completion Date			
	Contact Person	Telephone No.	Designer Architect and /or Design Engineer						
	Contract No.	Prime or Sub	Joint Venture (JV) Name, if applicable		EIN of JV, if applicable				
			Total Contract Amount	Amount Sublet to others	Uncompleted Amount				
8.	Agency/Owner			Award Date		Completion Date			
	Contact Person	Telephone No.	Designer Architect and /or Design Engineer						
	Contract No.	Prime or Sub	Joint Venture (JV) Name, if applicable		EIN of JV, if applicable				
			Total Contract Amount	Amount Sublet to others	Uncompleted Amount				

NEW YORK STATE
VENDOR RESPONSIBILITY QUESTIONNAIRE
ATTACHMENT B – UNCOMPLETED CONSTRUCTION CONTRACTS

Vendor Name:

NYS Vendor ID:

Question 3.1: List all current uncompleted construction contracts:						
9.	Agency/Owner		Telephone No.		Designer Architect and /or Design Engineer	
	Contact Person		Joint Venture (JV) Name, if applicable		EIN of JV, if applicable	
	Contract No.		Prime or Sub		Amount Sublet to others	
					Uncompleted Amount	
10.	Agency/Owner		Telephone No.		Designer Architect and /or Design Engineer	
	Contact Person		Joint Venture (JV) Name, if applicable		EIN of JV, if applicable	
	Contract No.		Prime or Sub		Amount Sublet to others	
					Uncompleted Amount	
Grand Total All Uncompleted Contracts					\$0.00	

**NEW YORK STATE VENDOR RESPONSIBILITY QUESTIONNAIRE
ATTACHMENT C - FINANCIAL INFORMATION**

NYS Vendor ID: _____

As of Date: _____

ASSETS

Current Assets

1. Cash		\$	-	
<hr/>				
2. Accounts receivable - less allowance for doubtful accounts	\$	-		
<hr/>				
Retainers included in accounts receivable	\$	-		
<hr/>				
Claims included in accounts receivable not yet approved or in litigation	\$	-		
<hr/>				
Total Accounts Receivable		\$	-	
<hr/>				
3. Notes receivable - due within one year		\$	-	
<hr/>				
4. Inventory - materials		\$	-	
<hr/>				
5. Contract costs in excess of billings on uncompleted contracts		\$	-	
<hr/>				
6. Accrued income receivable				
Interest	\$	-		
<hr/>				
Other (list) _____	\$	-		
<hr/>				
_____	\$	-		
<hr/>				
Total Accrued Income Receivable		\$	-	
<hr/>				
7. Deposits				
Bid and Plan _____	\$	-		
<hr/>				
Other (list) _____	\$	-		
<hr/>				
_____	\$	-		
<hr/>				
Total Deposits		\$	-	
<hr/>				
8. Prepaid Expenses				
Income Taxes	\$	-		
<hr/>				
Insurance	\$	-		
<hr/>				
Other (list) _____	\$	-		
<hr/>				
_____	\$	-		
<hr/>				
Total Prepaid Expenses		\$	-	
<hr/>				
9. Other Current Assets				
Other (list) _____	\$	-		
<hr/>				
_____	\$	-		
<hr/>				
Total Other Current Assets		\$	-	
<hr/>				
10. Total Current Assets				\$ -
				<hr/>
11. Investments				
Listed securities-present market value	\$	-		
<hr/>				
Unlisted securities-present value	\$	-		
<hr/>				
Total Investments				\$ -
				<hr/>

**NEW YORK STATE VENDOR RESPONSIBILITY QUESTIONNAIRE
ATTACHMENT C - FINANCIAL INFORMATION**

NYS Vendor ID: _____

12. Fixed Assets

Land	\$	-	
Building and improvements	\$	-	
Leasehold improvements	\$	-	
Machinery and equipment	\$	-	
Automotive equipment	\$	-	
Office furniture and fixtures	\$	-	
Other (list) _____	\$	-	
	\$	-	
Total		\$	-
Less: Accumulated depreciation		\$	-
Total Fixed Assets - Net			\$ -

13. Other Assets

Loans receivable			
Officers	\$	-	
Employees	\$	-	
Shareholders	\$	-	
Cash surrender value of officers' life insurance	\$	-	
Organization expense – net of amortization	\$	-	
Notes receivable - due after one year	\$	-	
Other (list) _____	\$	-	
	\$	-	
Total Other Assets			\$ -

14. TOTAL ASSETS

\$ -

**NEW YORK STATE VENDOR RESPONSIBILITY QUESTIONNAIRE
ATTACHMENT C - FINANCIAL INFORMATION**

NYS Vendor ID: _____

LIABILITIES

Current Liabilities

15. Accounts payable	\$	-
16 a. Loans from shareholders - due within one year	\$	-
16 b. Other Loans - due within one year	\$	-
17. Notes payable - due within one year	\$	-
18. Mortgage payable - due within one year	\$	-
19. Other payables - due within one year		
Other (list) _____	\$	-
_____	\$	-
Total Other Payables - due within one year	\$	-
20. Billings in excess of costs and estimated earnings	\$	-
21. Accrued expenses payable		
Salaries and wages	\$	-
Payroll taxes	\$	-
Employees' benefits	\$	-
Insurance	\$	-
Other	\$	-
Total Accrued Expenses Payable	\$	-
22. Dividends payable	\$	-
23. Income taxes payable		
State	\$	-
Federal	\$	-
Other	\$	-
Total Income Taxes Payable	\$	-
24. Total current liabilities	\$	-
25. Deferred income taxes payable		
State	\$	-
Federal	\$	-
Other	\$	-
Total Deferred Income Taxes	\$	-
26. Long Term Liabilities		
Loans from shareholders - due after one year	\$	-
Other Loans - due within one year		
Principle	\$	-
Interest	\$	-
Notes payable - due after one year	\$	-
Mortgage - due after one year	\$	-
Other payables - due after one year	\$	-
Other (list) _____	\$	-
_____	\$	-
Total Long Term Liabilities	\$	-

**NEW YORK STATE VENDOR RESPONSIBILITY QUESTIONNAIRE
ATTACHMENT C - FINANCIAL INFORMATION**

NYS Vendor ID: _____

27. Other Liabilities

Other (list) _____	\$ _____
_____	\$ _____
_____	\$ _____

Total Other Liabilities

\$ _____

28. TOTAL LIABILITIES

\$ _____

NET WORTH

29. Net Worth (if proprietorship or partnership)

\$ _____

30. Stockholders' Equity

Common stock issued and outstanding	\$ _____
Preferred stock issued and outstanding	\$ _____
Retained earnings	\$ _____
Total	\$ _____
Less: Treasury stock	\$ _____

31. TOTAL STOCKHOLDERS' EQUITY

\$ _____

32. TOTAL LIABILITIES AND STOCKHOLDERS' EQUITY

\$ _____

GENERAL CONDITIONS

Table of Articles

1. The Contract Documents
2. Defined Terms
3. Interpretation of the Contract Documents
4. Shop Drawings and Other Submittals
5. Schedule
6. Materials
7. Contractor's Supervision
8. Use of Premises
9. Permits and Compliance
10. Inspection and Material Acceptance
11. Change Orders
12. Site Conditions
13. Suspension of Work
14. Time of Completion and Termination for Cause
15. Termination for Contractor's Employment for the Convenience of the State of New York
16. Disputes
17. Statutory Requirements for the Utilization of Minority and Women Owned Business Enterprises
18. Subcontracts
19. Coordination of Separate Contracts (WICKS Projects)
20. Responsibility for Damage and Indemnification
21. Insurance
22. Occupancy Prior to Completion and Acceptance
23. Payment
24. Audits and Records
25. Labor Law and Prevailing Wages Notifications Provisions
26. Statutory Requirements for Restrictions on Contracts during the Procurement Process and Disclosure of Contacts and Responsibility of Offerers
27. Miscellaneous Provisions

Appendices:

Standard Clauses for all New York State Contracts – Appendix A

Appendix B

ARTICLE 1 – THE CONTRACT DOCUMENTS

- 1.1 The Contract Documents are comprised of the following documents, all of which are hereby incorporated by reference and shall hereinafter be referenced as the “Contract.”
- Appendix A “Standard Clauses For New York State Contracts”;
 - Agreement;
 - General Conditions;
 - Supplemental Conditions;
 - Appendix B;
 - Specifications;
 - Drawings;
 - Instructions to Bidders;
 - Performance and Payment Bond;
 - Labor and Materials Bond;
 - All Required Certificates of Insurance;
 - All Addenda issued prior to the receipt of bids;
 - An Approved MWBE Utilization Plan, if required;
- 1.2 The Contract Documents form the Contract. The Contract represents the entire and integrated agreement between the parties and supersedes all prior negotiations, representations and agreements, either written or oral, including Bidding Documents.
- 1.3 The Contract may not be modified except in accordance with the General Conditions.

ARTICLE 2 – DEFINED TERMS

- 2.1 The following terms shall have the meanings ascribed to them in this Article, wherever they appear in the Contract Documents.
- 2.2 The term “Bid” means the approved prepared bid form on which the Bidder is to submit or has submitted a bid for the Project contemplated.
- 2.3 The term “Bidder” means any individual, firm or corporation submitting a Bid for the Project contemplated, acting directly or through a duly authorized representative.
- 2.4 The term “Bid Security” means the collateral in the form of a certified check, bank check or bid bond to be furnished by the Bidder as a guarantee of his or her ability to procure the minimum equipment and liquid assets specified and that Bidder shall enter into a Contract with the Office for the performance of the Work.
- 2.5 The term “Change Order” means a written order to the Contractor signed by the Contractor, Director’s Representative, and NYS Office of State Comptroller, issued after the execution of the Contract, authorizing a Change in the Work or an adjustment in the

Contract Sum or the Contract Time. The Contract Sum and the Contract Time may be changed only by Change Order.

- 2.6 The term “Commissioner” means the Commissioner of Parks, Recreation and Historic Preservation.
- 2.7 The term “Comptroller” means the Comptroller of the State of New York.
- 2.8 The term “Contractor” means the person, firm, partnership or corporation executing the Contract or the successor or assignee of the Contractor approved in writing by the Commissioner.
- 2.9 The term “Days” shall mean calendar days.
- 2.10 The term “Designated Payment Office” shall be the regional office as identified on the cover of the Project Manual.
- 2.11 The term “Director” means the Director of Capital Programs or equivalent for the Office of Parks, Recreation and Historic Preservation, who will have general direction and supervision of the Work, except for Appendix B where the term “Director” means the Director of the Division on Minority and Women’s Business Development.
- 2.12 The “Director’s Representative” means an employee of the Office designated by the Director as the Director’s authorized representative. Under the direction of the Director, the Representative shall have complete charge of the Work and shall exercise full supervision and direction of the Work. Except where noted, the Contract Documents specifically designate a person to perform a function or duty, it shall mean the Director’s Representative but only for the performance of that function or duty. Where the word “directed” appears in the Contract Documents, the words “by the Director’s Representative” shall be deemed inserted thereafter in each case except where it is obviously inappropriate in context.
- 2.13 The term “Labor and Materials Bond” is a bond guaranteeing prompt payment of monies due to all persons furnishing labor or materials to the Contractor or any Subcontractor in the prosecution of the Work provided for as set forth in State Finance Law Section 137.
- 2.14 The term “Liquidated Damages” means the total amount of money to be assessed against the Contractor for delay in completion of the Contract. The total amount of such damages shall not exceed the amount per day stipulated in Article 14.10 times the numbers of Days completion is delayed, unless otherwise specified in the Notice to Bidders.
- 2.15 The term “Material” means any approved material acceptable to the Director’s Representative and conforming to the requirements of the Specifications. All processes and materials shall at all times be open to inspection and testing by the Office and its authorized representatives.

- 2.16 The term “Offerer” shall mean the individual or entity, or any employee, agent of consultant or person acting on behalf of such individual or entity that contacts a governmental entity about a governmental procurement during the restricted period of such governmental procurement.
- 2.17 The term “Office” or “OPRHP” means the New York State Office of Parks, Recreation and Historic Preservation.
- 2.18 The term “Performance Bond” means a written guaranty from a third party guarantor provided to the Office by Contractor upon the award of the Contract to ensure the full performance of the Work and completion of the Project as set forth in the Contract Documents. The form of the Performance Bond is subject to the approval of the Office and the Attorney General.
- 2.19 The term “Physical Completion Date” means the date upon which the Contractor and the Director’s Representative agree that all deficiencies noted on the final inspection report have been corrected as evidenced by the issuance of the Physical Completion Report.
- 2.20 The term “Physical Completion Report” means the report issued by the Director’s Representative in which all the deficiencies in the work are noted.
- 2.21 The term “Plan” or “Drawings” means an illustrated graphic that typically includes technical layout information, specification data, and details as required to facilitate the construction of an entire project or smaller unit of work.
- 2.22 The term “Premises” means all land, buildings, structures, or other items of any kind located around or adjacent to the Site and owned, occupied or otherwise used by the State.
- 2.23 The term “Project” means Work at the site carried out pursuant to one or more sets of Contract Documents.
- 2.24 The term “Project Manual” means the combined Notice to Bidders, Instructions to Bidders, Supplementary Conditions, the Summary of and Implementation Guidelines for § 139-J of the State Finance Law, Sample Forms, Bid Forms, General Conditions, All Referenced Appendices, Prevailing Wage Rates, the Drawings and Specifications; the Invitation for Bids and the Bid, issued prior to the receipt of bids.
- 2.25 The term “Provide” means to furnish and install, complete, in place and ready for operation and use.
- 2.26 The term “Samples” are physical examples submitted by the Contractor of materials, equipment or workmanship to establish a standard, which the Contractor is required to meet.

- 2.27 The term “Schedule of Values” means a breakdown of the Contract Sum in tabular form that lists the dollar value of individual work items. Schedule to be provided in accordance with specific Division 01 requirements and in enough detail to facilitate evaluation of the Payment Application by the Director’s Representative.
- 2.28 The term “Shop Drawings” are drawings, diagrams, illustrations, schedules, test data, performance charts, cuts, brochures and other data which are prepared by the Contractor or any Subcontractor, manufacturer, supplier or distributor, and submitted by the Contractor and which illustrate a portion of the Work.
- 2.29 The term “Site” means the area within the contract limit lines as identified in the drawings, or adjacent areas designated in writing by the Director’s Representative. Some contracts might involve separate and distinct sites.
- 2.30 The term “Specifications” means the body of directions and/or requirements contained in this document, together with all documents of any description, and agreements made (or to be made), pertaining to the methods (or manner), of performing the work and quality (as shown by test records) of accepted materials to be furnished under this Contract.
- 2.31 The term “State” means the State of New York.
- 2.32 The term “Subcontractor” means a person, firm, partnership or corporation executing a portion of the Work for the “Contractor,” who has the sole responsibility for his or her performance.
- 2.33 The term “Substantial Completion” means that the Work required by the Contract with OPRHP is sufficiently complete, in accordance with the Contract, so that OPRHP may occupy or utilize the Work for its intended use; provided further, that Substantial Completion shall apply to the entire Project or a portion of the entire Project if the Contract with OPRHP provides for occupancy or use of a portion of the Project.
- 2.34 The term “Surety” means the entity which is bound with and for the Contractor, and which is engaged to be responsible for the Contractor’s acceptable performance of the Project for which he or she has contracted and for all Labor, Performance, and Material Bonds.
- 2.35 The term “Work” means the total sum of labor, supervision, materials and equipment necessary for the proper completion of the Contract as set forth in the Contract Documents.

ARTICLE 3 – INTERPRETATION OF CONTRACT DOCUMENTS

- 3.1 The Plans, Drawings and Specifications are complementary, and what is called for by one shall be as binding as if called for by all. It is not intended to include work not properly inferable from the Plans, Drawings and Specifications. In all cases, labelled dimensions shall take precedence over scaled dimensions, and the larger scale details take precedence

over smaller scale drawings. In the case of difference between Drawings and Specifications, the Specifications shall govern.

- 3.2 Upon his or her own initiative or the Contractor's written request, the Director's Representative may issue written interpretation or drawings necessary for the proper execution or progress of the work which interpretation shall be consistent with and reasonably inferable from the Contract Documents.
- 3.3 The language of the Contract Documents is directed at the Contractor unless specifically stated otherwise.
- 3.4 The organization of the Specifications into divisions, sections and articles, and the arrangement of Drawings shall not control the Contractor in dividing the Work among subcontractors or in establishing the extent of Work to be performed by any trade.
- 3.5 In the event of conflicting provisions in the Contract Documents, the Specifications shall take precedence over the Drawings.
- 3.6 If during the performance of the Work, the Contractor identifies a conflict in the Contract Documents, or a variation from any applicable statute, rule or regulation, the Contractor shall promptly notify the Director's Representative in writing of the conflict. The Director's Representative shall promptly acknowledge the notification in writing and advise the Contractor, pursuant to Paragraph 3.2 of these General Conditions, as to the interpretation to be followed in the performance of the Work.

ARTICLE 4 – SHOP DRAWINGS AND OTHER SUBMITTALS

- 4.1 Shop Drawings (see Article 2.28)
- 4.2 Product data are manufacturer's catalogsheets, brochures, standard diagrams, illustrations, schedules, performance charts, test data, standard schematic drawings, specifications and installation instructions.
- 4.3 Samples are physical examples submitted by the Contractor of materials, equipment or workmanship to establish a standard that the Contractor is required to meet.
- 4.4 The Contractor and the Director's Representative shall adhere to the submittal and scheduling requirements for Shop Drawings, product data and Samples set out in the Specifications.
- 4.5 By approving and submitting Shop Drawings and samples, the Contractor represents that the Contractor has determined and verified all field measurements, field construction criteria, materials, catalog numbers and similar data and that he or she has checked and coordinated each Shop Drawing and Sample with the requirements of the Contract Documents.

- 4.6 The Director's Representative's approval of Shop Drawings, product data and Samples shall not relieve the Contractor of responsibility for any deviation from the requirements of the Contract Documents unless the Contractor has previously informed the Director's Representative of the deviation in a separate writing at the time of submission and received written approval for the specific deviations. The Director's Representative's approval shall not relieve the Contractor from responsibility for errors or omissions in the shop drawings, product data or samples.
- 4.7 No portion of the Work requiring Shop Drawings, product data or Sample submission shall be commenced until the appropriate submission has been approved by the Director's Representative.
- 4.8 Any portions of the Work requiring Shop Drawings, product data and Samples shall be installed in accordance with the approved Shop Drawings, product data and Samples.

ARTICLE 5 – SCHEDULE

- 5.1 Each Contractor shall deliver to the Director's Representative and receive approval prior to commencing work, a detailed schedule concerning his or her operations upon the Project on a form acceptable to the Office, which shall indicate completion within the specified time frame, to the satisfaction of the Director's Representative.
- 5.2 During the term of this Agreement, the Director's Representative may require any Contractor to modify any schedules which he or she has submitted either before or after they are approved so that:
- (a) The Work or the Project may be properly progressed.
 - (b) Changes in the Work or the Work of other Contractors are properly reflected in these schedules.

ARTICLE 6 - MATERIALS

- 6.1 All materials, equipment and articles used permanently in the Work that become the property of the State shall be new unless specifically stated otherwise in the Contract.
- 6.2 Except where specifically provided otherwise, whenever any product is specified by the name, trade name, make, model or catalog number of any manufacturer or supplier, the intent is not to limit competition, but to establish a standard of quality that the Director's Representative has determined is necessary. The words "or equal" shall be deemed inserted in each instance. The Contractor may use any product equal to that named in the Contract Documents that is approved by the Director's Representative and which meets the requirements of the Contract Documents provided the Contractor gives timely notice of his or her intent in accordance with the submittal and scheduling requirements.

- 6.3 The Contractor shall have the burden of proving at the Contractor's own cost and expense to the satisfaction of the Director's Representative that the proposed product is equal to the named product. The Director's Representative may establish criteria for product approval. The Director's Representative shall determine in his or her absolute discretion whether a proposed product is to be approved.
- 6.4 If the Contractor fails to comply with the provisions of this Article, or if the Director's Representative determines that the proposed product is not equal to that named, the Contractor shall supply the product named.
- 6.5 The Contractor shall have and make no claim for the extension of time or for damages because the Director's Representative requires a reasonable period of time to consider a product proposed by the Contractor or because the Director's Representative disapproves such a product.
- 6.6 Where optional materials or methods are specified, or where "or equal" submissions are approved, the Contractor shall make all adjustments to contingent work, whether the contingent work be the Work of its contract or the Work of another Contract, necessary to accommodate the option or "or equal" product it selects without extra or additional cost.
- 6.7 The Contractor shall within 48 hours remove from the Premises all materials rejected by the Director's Representative as failing to conform to the Contract, whether incorporated in the Work or not, and the Contractor shall promptly substitute satisfactory materials in accordance with the Contract and without expense to the Office. In addition, the Contractor shall bear the expense of making good all work of other contractors destroyed or damaged by such removal or replacement.
- 6.8 Royalties and patents: The Contractor shall pay all royalties and license fees. The Contractor shall defend all suits or claims for infringement of any patent rights and shall defend, indemnify and save the State harmless from loss on account thereof, except that the State shall be responsible for all such loss when a particular design, process or the product of a particular manufacturer or manufacturers is specified.
- 6.9 Asbestos Free Materials: All materials used for construction shall be free of asbestos containing materials. If asbestos is found in installed products not previously approved by the State, then it will be the responsibility of the contractor to abate the asbestos containing material and replace the work with new asbestos free materials at no cost to the State.
- 6.10 The contractor agrees that if the value of this contract exceeds \$100,000 all structural steel, reinforcing steel and other major steel items to be incorporate in the Work of this Contract shall be produced and made in whole or substantial part in the United States, its territories or possessions.

ARTICLE 7 – CONTRACTOR'S SUPERVISION

- 7.1 The Contractor shall designate a competent supervisor for the Work to represent the Contractor at the site at all times with authority to act for the Contractor (“Contractor’s Representative”). The Contractor shall notify the Director’s Representative in writing of the identity of the Contractor’s Representative prior to the commencement of the Work. All directions given the Contractor's Representative shall be as binding as if given to the Contractor.
- 7.2 Should the Director’s Representative deem any employee of the Contractor incompetent or negligent or for any cause unfit for his or her duty, the Contractor shall dismiss such employee and he or she shall not again be employed on the Work.
- 7.3 The Contractor’s use of any Subcontractor shall not diminish the Contractor’s obligations to complete the Work in accordance with the Contract. The Contractor shall control and coordinate the Work of its Subcontractors.
- 7.4 The Contractor shall be responsible for informing its Subcontractors and suppliers of all the terms, conditions and requirements of the Contract Documents including, but not limited to the General Conditions, Supplemental Conditions, the Drawings and Specifications, Appendix A, and changes made by Addenda.

ARTICLE 8 – USE OF PREMISES

- 8.1 If the Premises are occupied, the Contractor, the Contractor's Subcontractors and their employees shall comply with the regulations governing access to, operation of, and conduct while in or on the Premises and shall perform the Work in such a manner as not to unreasonably interrupt or interfere with the conduct of business.
- 8.2 The Contractor, the Contractor's Subcontractors and their employees shall not have access to or be admitted into any area of the Premises outside the Site except with the written permission of the Director's Representative.

ARTICLE 9 – PERMITS AND COMPLIANCE WITH APPLICABLE LAWS

- 9.1 The Contractor shall obtain, maintain and pay for all permits and licenses legally required and shall give all notices, pay all fees, and comply with all laws, rules and regulations applicable to the Work at no additional cost.
- 9.2 Contractor shall comply with all federal and state laws, codes and regulations applicable to the conduct of the activities authorized by this Contract.
- 9.3 If, in carrying out this Work, a harmful dust hazard is created for which appliances or methods for the elimination of harmful dust have been approved by the Industrial Board of

Appeals, then the Contractor shall install, maintain and effectively operate such appliances and methods during the life of this Contract; and in case of Contractor's failure to comply, as provided by Section 222-a of the Labor Law, the Contract shall be void.

- 9.4 In accordance with Worker's Compensation Law (WCL) §141-b (Suspension and Debarment), any person subject to a final assessment of civil fines or penalties or a stop-work order, or that has been convicted of a misdemeanor for a violation of WCL §§ 26 (Enforcement of Payment in Default), 52 (Effect of Failure to Secure Compensation) or 131 (Payroll Records), and any substantially-owned affiliated entity of such person, shall be ineligible to submit a bid on or be awarded any such public work contract or subcontract with the State, any municipal corporation or public body for a period of one (1) year from the final determination or conviction. Any person convicted of a felony under Article 8 (Administration) of the WCL, or a misdemeanor under WCL §§125 (Job Description Prohibited Based on Prior Receipt of Benefits) and 125-a (Civil Enforcement) shall be ineligible to submit a bid or be awarded any public work contract or subcontract with the State, any municipal corporation or public body for a period of five (5) years from such conviction.
- 9.5 The Contractor certifies and warrants that all heavy-duty vehicles, as defined in New York State Environmental Conservation Law (ECL) section 19-0323, to be used under this Contract will comply with the specifications and provisions of ECL section 19-0323, as well as any regulations promulgated pursuant thereto, including NYCRR Part 248; which, requires the use of Best Available Retrofit Technology (BART) and Ultra-Low Sulfur Diesel (ULSD) fuel.
- 9.6 During the term of this Contract, the Contractor agrees to report any observed or suspected illegal activity of its employees, agents or other third parties, to the assigned Director's Representative, OPRHP Director of Capital Programs, OPRHP Counsel's Office, the State Inspector General or other law enforcement agency. Failure to report criminal conduct associated with a contract awarded by the Office, shall be considered a material breach of this Contract and may provide grounds for disqualification of the subject Contractor or Subcontractor for award of future contracts. The Contractor shall include the provisions of this section in every subcontract, in such a manner that the provisions will be binding upon each Subcontractor as to work performed in connection with this Contract.

ARTICLE 10 – INSPECTION AND MATERIAL ACCEPTANCE

- 10.1 The Director's Representative will inspect and test the Work at reasonable times at the Site, unless the Director's Representative determines to make an inspection or test at the place of production, manufacture or shipment. Such inspection or test shall be conclusive as to whether the material and workmanship inspected or tested conforms to the requirements of the Contract. Such inspection or test shall not relieve the Contractor of responsibility for damage to or loss of the material prior to acceptance. Conducting inspections or tests shall not diminish the Director's Representative the right to reject the completed Work.

- 10.2 The Contractor shall, without charge, promptly correct any Work the Director's Representative determines does not conform to the Contract Documents unless in the public interest the Director's Representative consents to accept such Work with an appropriate adjustment in the Contract price. The Contractor shall promptly remove rejected material from the Premises.
- 10.3 If the Contractor does not promptly correct rejected Work including the Work of another contractor or Subcontractor destroyed or damaged by removal, replacement, or correction, the Director's Representative may (1) correct such Work and charge the cost thereof to the Contractor; or (2) terminate the Contract in accordance with Article 15 of General Conditions.
- 10.4 The Contractor shall furnish promptly, without additional charge, all facilities, labor, material and equipment reasonably needed to perform in a safe and convenient manner such inspections and tests, as the Director's Representative requires.
- 10.5 The Contractor shall keep the Director's Representative informed of the progress of the Work and particularly when the Contractor intends to cover Work not yet inspected or tested. All inspection and tests by the Director's Representative shall be performed in such manner as not to unreasonably delay the Work. The Contractor shall be charged with any additional cost of inspection when the Work is not ready at the time specified by the Director's Representative for inspection.
- 10.6 Should the Director's Representative determine at any time before acceptance of the entire Work to examine Work already completed by removing, uncovering or testing the same, the Contractor shall, on request, promptly furnish all necessary facilities, labor, materials and equipment to conduct such inspection, examination or test. If such Work is found to be defective or nonconforming in any material respect, the Contractor shall defray all the expenses of such examination and satisfactory reconstruction. If the Work is found to meet the requirements of the Contract Documents, the Director's Representative shall compensate the Contractor for additional services involved in such examination and reconstruction. If completion of the Work has been delayed, the contractor may request a suitable extension of time.
- 10.7 No previous inspection or certificates of payment shall relieve the Contractor from the obligation to perform the Work in accordance with the Contract Documents.
- 10.8 The Contractor shall remedy all defects, and pay for the cost of any damage to other Work resulting therefrom, notice of which shall have been provided within a period of one year from the Physical Completion Date in accordance with the General Conditions.

ARTICLE 11 – CHANGE ORDERS

- 11.1 The Office may make changes by altering, adding to or deducting from the Work, and adjusting the Contract price accordingly. All changes Work shall be executed in

conformity with the terms and conditions of the Contract Documents unless otherwise provided in the Order on Contract. Any change in the Contract sum or time for completion shall be adjusted prior to issuing the Order on Contract.

- 11.2 No written or oral instructions shall be construed as directing a change in the Work unless in the form of an Order of Contract signed by the Office and the Contractor and signed by the NYS Office of State Comptroller. The Order of Contract shall describe or enumerate the Work to be performed and state the price to be added to or deducted from the Contract sum. If the extent or cost of the Work is not determinable until after the changed Work is performed, the Order on Contract shall specify the method for determining the cost and extent of the changed Work when completed. If the Contractor disagrees as to any element of the Order on Contract, the Contractor shall indicate the disagreement in writing on the face of the Order on Contract and promptly proceed in accordance with the Order on Contract.
- 11.3 If the Contractor is directed to perform Work for which the Contractor believes he or she is entitled to an Order of Contract, the Contractor shall give the Director prompt written notice and await instructions before proceeding to execute such Work. The Director may order the Contractor to execute the Work and proceed under the Disputes Clause.
- 11.4 The value of any Order of Contract shall be determined by one or more of the following methods:
- (a) By acceptance of prices negotiated or established based on estimated cost plus overhead and profit as applicable.
 - (b) By Prices specifically named in the Specifications or Bid Form.
 - (c) By acceptance of agreed unit prices based on estimated cost plus overhead and profit as applicable.
 - (d) By estimate of the actual cost of labor and materials plus overhead and profit, cost to be determined as the work progresses.
 - (e) By actual cost of labor and materials plus overhead and profit, cost to be determined as the work progresses.
 - (f) By estimate of the value as deductible from the approved detailed estimate.
- 11.5 Overhead shall be defined as an allowance to compensate for all costs, charges and expenses, direct or indirect, except for the actual cost of labor and materials as defined by paragraph 11.6. Overhead shall be considered to include, but not limited to insurance (other than as mentioned in paragraph 11.6) bond or bonds, field and office supervisors and assistants above the level of foreman, use of small tools and minor equipment, incidental job burdens, general office expenses, etc.

- 11.6 Actual cost of labor and material shall be defined as the amount paid for the following costs, to the extent determined reasonable and necessary:
- (a) Cost of materials delivered to the job site for incorporation into the Contract Work. The value of any material removed and disposed of by the Contractor shall be a credit to the Office.
 - (b) Wages paid to workers and foreman and wage supplements paid to labor organizations in accordance with current labor agreements.
 - (c) Premiums or taxes paid by the Contractor for Worker's compensation insurance, unemployment insurance, FICA tax and other payroll taxes as required by law, net of actual and anticipated refunds and rebates.
 - (d) Sales taxes paid as required by law.
 - (e) Allowance for use of construction equipment (exclusive of hand tools and minor equipment), as approved for use by the Director's Representative.
 - i. Rented equipment will be paid for at the actual rental cost.
 - ii. Gasoline, oil and grease required for operation and maintenance will be paid for at the actual cost.
 - iii. When, in the opinion of the Contractor, and as approved by the Director's Representative, suitable equipment is not available on the site, the moving of said equipment to and from the site will be paid for at actual cost.
 - iv. Self-owned equipment, including equipment rented from controlled or affiliated companies. The rate on self-owned equipment used for periods of under five days will be an hourly rate established by taking any published rate which is mutually acceptable to the Contractor and the Director's Representative and determining an hourly rate on the basis of 22 days per month and eight hours per day. Equipment used for periods of five days or more will be billed at a rate equal to 45% of the monthly rate. In the alternative, the Director's Representative may approve for reimbursement a rate representing the allocable costs of ownership.
- 11.7 Regardless of the method used to determine the value of any Order of Contract, the Contractor will be required to submit evidence satisfactory to the Director to substantiate each and every item that constitutes his or her proposal of the value of the change. The amounts allowed for overhead and profit shall not exceed the applicable percentages as established in the two following paragraphs.
- 11.8 If the work is done directly by the Contractor, overhead in an amount of 10% may be added

if method (a), (c), (d) or (e) is used, and to the cost of the labor and materials plus overhead there may be added 10% for profit. The percentages for overhead and profit may vary accordingly to the nature, extent and complexity of the Work involved, but in no case shall exceed the percentages set forth in this paragraph and in paragraph 11.9. No percentages for overhead and profit will be allowed on payroll taxes or on the premium portion of overhead pay.

- 11.9 If the Work is done by a subcontractor, subcontractor's overhead in the amount of 5% may be added to the cost of labor and materials if method (a), (c), (d), and (e) is used and to the cost of labor and materials plus overhead there may be added 10% for the subcontractor's profit. No percentage for overhead and profit will be allowed on payroll taxes or on the premium portion of overtime pay. However, to the extent that the aggregate dollar value of Orders on Contract exceeds \$75,000, the 10% overhead applied to total costs of labor and materials incurred by the prime Contractor shall be reduced to 5%. In addition, on all individual Orders of Contract in excess of \$75,000, the overhead shall be no more than 5% of the total actual cost of labor and materials incurred by the Contractor, and the combined Contractor's overhead and profit allowance applied to subcontract billings shall be no more than 5%.
- 11.10 The Director shall determine by which of the foregoing methods of value of any changes shall be computed.
- 11.11 In computing the value of an Order on Contract which involved additions and deductions of Work and the added Work exceeds the omitted Work, overhead and profit shall be computed on the amount by which the cost of additional labor material exceeds the cost of the omitted labor and material, except no additional overhead and profit shall be allowed on value of work determined by method (b) or (f).
- 11.12 In computing the value of an Order of Contract which involves deductions and additions of Work and the omitted work exceeds the added Work, the Contractor will be allowed to retain the overhead and profit on the amount by which the omitted Work exceeds the added Work, except that no overhead and profit shall be retained on value of Work determined by method (b) or (f).
- 11.13 The Contractor may retain overhead and profit on an Order of Contract which involved deductions only, except that no overhead and profit shall be considered on value of Work determined by method (b) or (f).

ARTICLE 12 – SITE CONDITIONS

- 12.1 If the Contractor encounters subsurface or other latent physical conditions at the Site which differ substantially from those shown, described or indicated in such information provided in the Contract Documents or from any information which is a public record and which subsurface or other latent physical condition could not have been reasonably anticipated from that information or from the Contractor's own inspection and

examination of the Site, the Contractor shall give immediate written notice to the Director's Representative before any such condition is disturbed. The Director's Representative shall promptly investigate and, if it is determined that the conditions substantially differ from those that should have been reasonably anticipated, shall make such changes in the Contract Documents as may be required. If necessary, the Contract sum and completion date shall be adjusted by Change Order, to reflect any increase or decrease in the cost of, or time required for, performance of the Contract.

- 12.2 The Contractor shall protect trees, shrubbery and other natural features or structures within the Premises from being cut, trimmed, or injured, unless directed by the Director's Representative for preparing the Site for the Work. The Contractor shall prevent employees from tramping in the shrubbery and vehicles from being driven through wooded lands. When necessary, the Contractor shall protect trees adjacent to the premises in a matter satisfactory to the Director's Representative.
- 12.3 The Contractor shall provide and replant at its own expense trees, shrubbery, and other natural features destroyed or damaged. The Contractor shall conduct its operations within the Premises as directed by the Director's Representative.

ARTICLE 13 – SUSPENSION OF WORK

- 13.1 Suspension of Work: The Director may order the Contractor in writing to suspend, delay, or interrupt performance of all or any part of the Work for a reasonable period of time as the Director, in his or her sole discretion, may determine ("Suspension Order"). The order shall contain the reason or reasons for issuance that may include but shall not be limited to the following: latent field conditions, substantial program revisions, civil unrest, acts of God.
 - 13.1.1 Upon receipt of a Suspension Order, the Contractor shall, as soon as practicable, cease performance of the Work as ordered and take immediate affirmative measures to protect such Work from loss or damage.
 - 13.1.2 The Contractor specifically agrees that a suspension, interruption or delay of the performance of the Work pursuant to this Article shall not increase the cost of performance of the Work of this Contract.
 - 13.1.3 A Suspension Order issued by the Director pursuant to this Article shall have duration not to exceed 30 days. If the Contractor is not directed to resume performance of the Work affected by said Suspension Order prior to the expiration of 30 days, the Contract may be terminated for the convenience of the State and the Contractor shall be reimbursed as provided by Article 15.
- 13.2 Stop Work Orders: If the Work is defective, or Contractor fails to supply sufficient skilled workers or suitable materials or equipment, or fails to furnish or perform the Work in such a way that the completed Work will conform to the Contract Documents,

the Director's Representative may order Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, this right of the Director's Representative to stop the Work shall not give rise to any duty on the part of the Director's Representative to exercise this right for the benefit of Contractor or any other party.

13.2.1 Contractor shall bear all direct, indirect and consequential costs of such order to Contractor to stop Work including but not limited to fees and charges of engineers, architects, attorneys and other professionals, any additional expenses incurred by the Office due to delays to others performing work under a separate contract with the Director's Representative, and other contractual obligations, and Contractor shall further bear the responsibility for maintaining schedule and shall not be entitled to any extension of contract time or recovery of any delay damages due to the order to stop Work.

13.2.2 In the event that Contractor fails to pay such costs within thirty days after receipt of an invoice from Office, a Change Order or proposed Change Order may be issued incorporating the unpaid amount as an appropriate reduction in the Contract Price. If the parties are unable to agree as to the amount thereof, the Contractor may make a claim therefore as provided in Article 11 of the General Conditions.

ARTICLE 14 – TIME OF COMPLETION AND TERMINATION FOR CAUSE

14.1 All time limits set forth in this Contract are of the Essence. Failure by the Contractor to meet with the Contract deadlines shall be cause for the Office to assess Liquidated Damages.

14.2 Termination for Cause. In addition to all other rights of termination provided by law and in this Contract, if any one or more of the following events shall occur, that is to say.

14.2.1 If Contractor commences a voluntary case under any chapter of the Bankruptcy Code, as now or hereafter in effect, or if Contractor takes any equivalent or similar action by filing a petition or otherwise under any other federal or state law in effect at such time relating to the bankruptcy or insolvency;

14.2.2 If a petition is filed against Contractor under any chapter of the Bankruptcy Code as now or hereafter in effect at the time of filing, or if a petition is filed seeking any such equivalent or similar relief against Contractor under any other federal or state law in effect at the time relating to bankruptcy or insolvency;

14.2.3 If Contractor makes a general assignment for the benefit of creditors;

14. 2.4 If a trustee, receiver, custodian or agent of Contractor is appointed under applicable law or under contract, whose appointment or authority to take charge

of property of Contractor is for the purpose of enforcing a lien against such property or for the purpose of general administration of such property for the benefit of Contractor's creditors;

- 14. 2.5 If Contractor admits in writing an inability to pay its debts generally as they become due;
- 14. 2.6 If Contractor fails to perform the Work in accordance with the Contract Documents, including, but not limited to, failure to supply sufficient skilled workers, or suitable materials or equipment, or failure to adhere to the progress schedule established under Article 5.1 as revised from time to time or failure to submit an updated schedule as required by Article 5.2;
- 14.2.7 If Contractor disregards the authority of the Director's Representative;
- 14.2.8 If Contractor filed certification in accordance with New York State Finance Law § 139-k which was intentionally false or intentionally incomplete;
- 14.3 If in the judgment of the Director, the Contractor fails or refuses to prosecute the Work in accordance with the Contract, or fails to complete the Work within the time provided by the Contract, the Director may terminate the Contract by written notice to the Contractor in the manner set forth in Article 27.2 herein and to the Surety in the manner set forth in the Performance Bond. In such event, the Director shall direct the Surety to complete the Work. If the Surety fails or refuses to complete the Work, the Director may take over the Work and prosecute it to completion by contract publicly let or otherwise, and may take possession of and utilize in completing the Work, such of the Contractor's materials, equipment and plant as may be on the Site of the Work. Whether or not the right to terminate is exercised, the Contractor and the Surety shall be liable for any damage to the State resulting from the Contractor's failure or refusal to complete the Work in accordance with the Contract or his or her failure to complete the Work within the time provided by the Contract.
- 14.4 If the Director terminates the Contract for failure to prosecute the Work, in addition to any damages provided for by law, the delay shall occasion the payment of damages by Contractor which shall consist of Liquidated Damages until the Work is physically completed, plus any increased costs the Office incurs in completing the Work.
- 14.5 The Contract shall not be so terminated nor the Contractor charged with resulting damage if:
 - (a) The delay in the completion of the Work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor including, but not restricted to, acts of God, acts of the public enemy, acts of another Contractor in the performance of a contract with the Office, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, unusually severe weather, or delays of subcontractors or suppliers arising from unforeseeable causes beyond the control

and without the fault or negligence of both the Contractor and such subcontractors or suppliers; and

- (b) The Contractor shall notify the Director's Representative in writing of the causes of delay within fifteen (15) days from when the Contractor knew or ought to have known of any such delay.
- 14.6 The Director's Representative will ascertain the facts and the extent of the delay and extend the time for completing the Work when, in the Director's Representative's judgment, the findings of fact justify such an extension, and his or her findings of fact shall be final and conclusive unless within twenty (20) Days from the date of receipt of the decision, the Contractor serves upon the Director a written appeal by certified mail. Upon appeal, the decision of the Director shall be final and conclusive.
- 14.7 If after notice of termination of the Contract, it is determined for any reason that the Contractor was not in default or that the delay was excusable, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to the termination for convenience clause.
- 14.8 The rights and remedies of the Office provided in this clause are in addition to any other rights and remedies provided by law or under this Contract, provided that damages for delay incurred by the Contractor shall be as specified in Articles 14.3 and 14.4.
- 14.9 The Office reserves the right to terminate this Contract in the event it is found that the certification filed by the Contractor in accordance with New York State Finance Law §139-k was intentionally false or intentionally incomplete. Upon such finding, the Office may exercise its termination right by providing written notification to the Contractor in accordance with the written notification terms of the Contract.
- 14.10 Liquidated Damages: The work represented in this Contract is part of a comprehensive program, undertaken by the Office on behalf of the People of the State of New York in the belief that the expenditures are justified by the benefits which accrue to the public. If the public does not get the full and complete use of facilities for which the expenditures are made, a resulting financial loss cannot be exactly computed. Accordingly, a deduction, indicated below or in the Notice to Bidders, will be made from the Contract price for every calendar day after the completion date specified in the Contract Documents for which the Contract is not completed in every detail. Said sum, because of the difficulty in determining accurately the loss to the State, is hereby fixed and agreed as the Liquidated Damages that the State will suffer by reason of such delay, and not as a penalty; such Liquidated Damages, as defined for this Project, are understood and agreed to be the actual cost of all extra inspection, salaries of contingent force, and other engineering expenses entailed upon the State as a result of such delay. The Liquidated Damages set forth herein apply only to a delay in completion of the Project and in no way are such damages to be interpreted as being the Office's exclusive remedy under the Contract or in Law.

SCHEDULE OF LIQUIDATED DAMAGES		
Original Total Contract Bid Price		Liquidated Damages per Calendar Day
From More Than	To and Including	
\$0	\$100,000	\$500
\$100,000	\$500,000	\$1,000
\$500,000	\$1,000,000	\$1,500
\$1,000,000	\$2,000,000	\$1,750
\$2,000,000	\$5,000,000	\$2,000
\$5,000,000	\$10,000,000	\$2,500
\$10,000,000	\$20,000,000	\$4,000
\$20,000,000		\$7,000

14.11 Contractor Responsibility:

- (a) Contractor shall at all times during the contract term remain a responsible vendor. Contractor agrees, if requested by State Parks, to present evidence of its continuing legal authority to do business in New York State, its integrity, experience, ability, prior performance and organizational and financial capacity to carry out the terms of this contract.
- (b) State Parks reserves the right to suspend any or all activities under this contract, at any time, when State Parks discovers information that calls into question the responsibility of Contractor. In the event of such suspension, Contractor will be given written notice outlining the particulars of such suspension. Upon issuance of such notice, Contractor must comply with the terms of the suspension order. Contractual activities may resume at such time as State Parks issues a written notice authorizing resumption of contractual activities.
- (c) Notwithstanding the provision of Article 14 of the contract pertaining to Termination and Revocation, upon written notice to Contractor and a reasonable opportunity to be heard with appropriate State Parks' staff, this contract may be terminated by State Parks at Contractor's expense where Contractor is determined by State Parks to be non-responsible. In such event, State Parks may pursue available legal or equitable remedies for breach.

ARTICLE 15 – TERMINATION OF CONTRACTOR’S EMPLOYMENT FOR THE CONVENIENCE OF THE STATE OF NEW YORK

- 15.1 The Director may terminate this Contract whenever in the Director's judgment the public interest so requires by delivering to the Contractor a notice of termination specifying the extent to which performance of Work under the Contract is terminated and the date upon which such termination becomes effective. Upon receipt of the notice of termination, the Contractor shall act promptly to minimize the expenses resulting from such termination. The Office shall pay the Contractor the sum of:
- (a) The costs actually incurred up to the effective date of such termination,
 - (b) The cost of settling and paying claims arising out of the termination of Work under subcontracts or orders exclusive of the amounts paid or payable on account of supplies or materials delivered or services furnished by the subcontractor prior to the effective date of the Notice of Termination of Work under this Contract, which amounts shall be included in the cost on account of which payment is made under (a) above, and
 - (c) The rate of profit and overhead on (a) and (b) as prescribed in Division 01- General Requirements. If the Contractor would have sustained a documentable loss on the entire Contract had it been completed, no profit shall be included or allowed under this subparagraph and an appropriate adjustment shall be made reducing the amount of the settlement to reflect the indicated rate of loss.
- 15.2 In no event shall the Contractor's compensation exceed the total Contract amount.
- 15.3 The amount of progress payments made to the Contractor prior to the date of termination was effective shall not be conclusive evidence of costs incurred, but progress payments shall be offset against any payment which the Office makes to the Contractor as a result of such termination.

ARTICLE 16 – DISPUTES

- 16.1 The Contractor shall submit notice of any dispute relating to the performance of this Contract to the Director’s Representative no more than fifteen (15) days after he or she knew or should have known of the facts which are the basis of the dispute. The notice shall be in writing and shall be transmitted:
- i. via certified or registered United States mail, return receipt requested;
 - ii. by facsimile transmission;
 - iii. by personal delivery;

- iv. by expedited delivery service; or
- v. by e-mail.

- 16.2 The Director's Representative shall acknowledge receipt of such notice by providing written acknowledgement to the Contractor; however, failure to provide written acknowledgment shall not be a breach of contract or in any way alter the Contractor's obligation to provide timely notice. The Contractor's notice shall identify the nature of the dispute; identify the person who rendered the decision or interpretation involved, and the date of the decision or interpretation with which the Contractor disputes, attaching a copy of such decision or interpretation; contain a statement of the contractual basis for the dispute; and identify the relief sought. The Contractor shall have a continual duty to promptly provide the Director's Representative with up to date information related to the dispute.
- 16.3 The Contractor agrees that Article 16 does not apply to any dispute which involves delay (see Article 14), acceleration, interference or any other act or omission constituting a breach of contract; any matter relating to extensions of time, bonuses or liquidated damages; to the value of any order on contract or field order; or to any termination for cause or convenience.
- 16.4 The Director's Representative shall reduce his or her decision to writing and furnish a copy thereof to the Contractor. The decision of the Director's Representative shall be final and conclusive unless within twenty (20) Days from the date of receipt of the decision, the Contractor serves upon the Director a written appeal by certified mail.
- 16.5 Upon appeal, the decision of the Director shall be final and conclusive. In connection with any appeal proceeding held pursuant to this Article, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of his or her appeal. Pending final determination of a dispute hereunder, the Contractor shall proceed diligently with the performance of the Contract in accordance with the Director's Representative's decision. Nothing in this Contract shall be construed as making final the decision of any administrative official upon a question of law.

ARTICLE 17 – STATUTORY REQUIREMENTS FOR THE UTILIZATIONS OF MINORITY AND WOMEN OWNED BUSINESS ENTERPRISES

- 17.1 Pursuant to Section 313 of Article 15-A of the Executive Law of the State of New York, the Director of the Division of Minority and Women's Business Development has promulgated rules and regulations (Parts 140 through 145 of Subtitle N of Title 9 New York Code of Rules and Regulations) (the "Regulations") for the purposes of ensuring that certified Minority and Women owned Business Enterprises shall be given the opportunity for meaningful participation in the performance of State contracts and to facilitate the award of a fair share of State contracts and subcontracts to such business enterprises.

- 17.2 The Contractor shall make a good faith effort to solicit active participation in the Work by enterprises identified in the directory of certified businesses obtainable from the Division of Minority and Women's Business Development, New York State Department of Economic Development.
- 17.3 The Contractor agrees, as a material condition of this contract, to be bound by the provisions of Section 316 of Article 15-A of the Executive Law of the State of New York, which relates to the resolution of disputes, which may arise under this Article.
- 17.4 The Contractor agrees to include the provisions of Articles 17.2 and 17.3 of these General Conditions in every subcontract it enters into as to Work in connection with this Contract in such a manner that the provisions will be binding upon such Subcontractor. However, the provisions of this paragraph shall not be binding upon the Contractor or its subcontractors in the performance of work or the provision of services that are unrelated, separate or distinct from this Contract as expressed by its terms.
- 17.5 The Regulations referred to in Article 17.1 of these General Conditions require, among other things, that a bidder or proposer for a State contract submit a utilization plan which shall identify certified Minority or Women Owned Business Enterprises which the bidder/proposer intends to use in connection with the performance of the proposed State contract. Such a utilization plan shall be submitted after bids are opened but prior to contract award.
- 17.5.1 Pursuant to the Regulations: (1) the Commissioner may require the submission by the Contractor of compliance reports relating to the implementation of and adherence to the utilization plan in performing the Contract; (2) the Commissioner shall allow the Contractor to apply for a partial or total waiver of the Minority and Women Owned Business participation requirements; (3) the Contractor may file a complaint with the Executive Director of the Division of Minority and Women's Business Development regarding a denial of a request for waiver of Minority and Women Owned Business participation requirements; (4) the Commissioner may file a complaint with the Executive Director of the Division of Minority and Women's Business Development in the event the Contractor fails to comply with the Minority and Women Owned Business participation requirements set forth in this Contract; and (5) the Commissioner may disqualify the Contractor's bid or proposal as being non-responsive for failure to remedy notified deficiencies contained in the Contractor's utilization plan after an administrative hearing on the record, reviewing all grounds for disqualification stated by the Commissioner and taking into consideration all the criteria set forth in Section 313 of the Executive Law.
- 17.5.2 The Contractor is referred to the entirety of the provisions of Section 316 of Article 15-A of the Executive Law of the State of New York and of the Regulations for the Contractor's full familiarization with their applicable provisions as terms of this Contract.

ARTICLE 18 – SUBCONTRACTS

- 18.1 Before any part of the Contract shall be sublet, the Contractor shall submit to the Director's Representative in writing the name of each proposed Subcontractor and supplier and obtain the Director's Representative's written consent to such Subcontractor and supplier. The names shall be submitted in ample time to permit acceptance or rejection of each proposed Subcontractor by the Director's Representative without causing delay in the work of the Project.
- 18.2 If the value of the Subcontract is \$10,000 or more, the Contractor shall promptly furnish a "NEW YORK STATE VENDOR RESPONSIBILITY QUESTIONNAIRE FOR PROFIT CONSTRUCTION (CCA-2)" for each Subcontractor and receive approval of the same prior to delivery of materials or performance of work from this Subcontractor.
- 18.3 The Contractor's use of subcontractors shall not diminish the Contractor's obligations to complete the work in accordance with the Contract. Each Contractor shall control and coordinate the work of his or her Subcontractors.
- 18.4 The Contractor shall be responsible for informing the Subcontractors of all the terms, conditions and requirements of the Contract Documents including, but not limited to the General Conditions and the Detailed Specifications.

ARTICLE 19 - COORDINATION OF SEPARATE CONTRACTS (WICKS PROJECTS)

- 19.1 The Office may award other contracts related to the Work. In that event, the Contractor shall coordinate his or her work with the Work of other contractors in such manner as the Office may direct. All contractors shall exchange working drawings, examine them and report any interferences or objections to the Director's Representative, in order to avoid delays. Each contractor shall control and coordinate the work of his or her Subcontractors, if any. The Office shall approve or require the modification of the work schedules of all contractors to the end that the Project may be progressed as expeditiously as the case permits.
- 19.2 If any part of the Work depends for proper execution or results upon the work of any other contractor, the Contractor shall inspect and promptly report in writing to the Director's Representative any defects in such work. The failure to inspect and report shall constitute an acceptance of the other contractor's work as fit and proper for the reception of the Contractor's Work.
- 19.3 The Director's Representative shall issue appropriate directions and take such other measure to coordinate and progress the Work as may be reserved to the Office in the Contract, and which an ordinarily reasonable project owner in similar circumstances would be expected to take. However, the Office shall not be liable for mere errors in judgment as

to the best course of action to adopt among the alternatives available in any given instance.

- 19.4 The award of more than one contract for the Project requires sequential or otherwise interrelated contractor operations, and will involve inherent coordination in the progress of any individual contractor's work. Accordingly, the Office cannot guarantee the unimpeded operations of any contractor. The Contractor acknowledges these conditions, and understands that he or she shall bear the risk of all ordinary delays caused by the presence or operations of other contractors engaged upon the project, and ordinary delays attendant upon any Office approved construction schedule. Should a contractor sustain damage through any act or omission of any other contractor, the contractor shall have no claim against the Office.
- 19.5 The Office shall not be liable for ordinary delays in any case nor for extraordinary delays that occur due to any contractor's failure to comply with directions of the Office or because of the neglect, failure or inability of any contractor to perform his or her work efficiently.
- 19.6 Any claim for extraordinary delay caused by an allegedly unreasonable or arbitrary act, or failure to act, by the Director's Representative in the exercise of his or her responsibility for supervision and coordination of the Work, shall be waived, released and discharged unless the Contractor whose work is impeded or delayed thereby, shall give notice in writing to the Director's Representative as promptly as possible and in sufficient time to permit the Director's Representative to investigate appropriate instructions.
- 19.7 The neglect or refusal of a Contractor to comply with supervisory directions issued by the Director's Representative pursuant to his or her responsibility for supervision of the Work shall constitute a failure to progress the work diligently in accordance with the Contract requirements and shall justify withholding payments otherwise due, or termination of the Contract as detailed in Article 15.
- 19.8 The Contractor shall indemnify the Office for damages recovered against the Office by another contractor to the extent that any such claim or judgment is the proximate cause of the Contractor's failure to progress the work in accordance with Contract requirements.

ARTICLE 20 – RESPONSIBILITY FOR DAMAGE AND INDEMNIFICATION

- 20.1 The Contractor shall faithfully perform and complete all of the work required by the Contract, and has full responsibility for the following risks:
- (a) Loss or damage, direct or indirect; to the Work including the building or structure in which the Work is being performed, or any other construction in progress, whether being performed by any other contractor or by the Office, or to any plant, equipment, tools, materials or property furnished, used, installed, or received by the Director's Representative under this Contract or any other contract. The Contractor shall bear all such risk of loss or damage, until all of the Work covered by the Contract has been finally accepted. In the event of such loss or damage, the

Contractor shall forthwith repair, replace, and make good any such loss or damage without additional costs.

- (b) Injury to persons (including death resulting therefrom), or damage to property caused by an occurrence arising out of the performance of this Contract for which the Contractor may be liable under any theory of law.

- 20.2 Contractor assumes all risks in the performance of all activities authorized by this Contract and agrees to defend, indemnify and hold harmless the People of the State of New York, the Office, their officers, employees, agents and assigns (hereinafter, collectively the "Indemnitees") from and against any and all claims, suits, losses, damage or injury to persons or property of whatsoever kind and nature, whether direct or indirect, caused or contributed to by Contractor and Contractor's sub-contractors, vendors, material suppliers, employees, agents, invitees and guests, and/or arising out of Contractor's conduct and/or Contractor's performance pursuant to this Contract, provided however that Contractor's indemnity shall not extend to any claims, liabilities, losses, damages, expenses, accidents or occurrences arising out of, relating to, or in connection with: (i) the negligence of any Indemnatee; or (ii) the Indemnitees' ordinary upkeep and maintenance of the Park and its grounds and facilities outside of the Premises. Contractor shall defend at its sole cost and expense any action commenced for the purpose of asserting any claim of whatsoever character arising out of this Contract. Contractor's responsibility under this section shall not be limited to the required or available insurance coverage.
- 20.3 For all purposes hereunder, the Office shall not be liable for any injury, loss or damage to Contractor, its agents, servants, sub-contractors, vendors, invitees and guests, or to any person happening on, in or about the Premises or its appurtenances, nor for any injury or damage to the Premises or to any property belonging to Contractor or to any other person, that may be caused by fire, theft, breakage, vandalism or any other use or misuse or abuse of any portion of the Premises, including but not limited to any common areas, sidewalks, roads, or water in or adjacent to the Premises, or that may arise from any other cause whatsoever, unless, and only to the extent of the proportion of which any such injury, loss or damage is determined to be caused by the negligence of the Office.
- 20.4 The Office shall not be liable to Contractor, its agents, contractors, vendors, invitees and guests, or any other person, for any failure of water supply, gas supply or electric current, nor for any injury or damage to any property of Contractor or any other person or to the Premises, caused by or resulting from spill or release of gasoline, oil, steam, gas, or electricity, or caused by leakage of any substance from pipes, appliances, sewers or plumbing works, or caused by hurricane, flood, tornado, wind or similar storm or disturbance, or caused by water, rain or snow that may leak or flow from the street, sewers or subsurface areas, or from any part of the Premises or any body of water within or adjacent to the Premises, or caused by any public or quasi-public work, unless, and only to the extent of the proportion by which any such injury, loss or damage is determined to be caused by the negligence of the Office.
- 20.5 The Office may retain such monies from the amount due the Contractor as may be

necessary to satisfy any claim for damages recovered against the State. The Contractor's obligations under this paragraph shall not be deemed waived by the failure of the Office to retain the whole or any part of such monies due the Contractor, nor shall such obligation be deemed limited or discharged by the enumeration or procurement of any insurance for liability for damages imposed by law upon the Contractor, Subcontractor or the State.

- 20.6 The Contractor agrees to make no claim for damages in the performance of the Contract occasioned by any act or omission to act of the Office or its representatives, and agrees that any such claim shall be fully compensated for by an extension of time to complete performance of the Work as provided herein.
- 20.7 The Contractor shall not create or cause to be created any lien, encumbrance or charge upon the Premises, the Office or any part thereof. If any mechanics, laborers or similar statutory or common law lien (including tax liens, provided that the underlying tax is an obligation of Contractor by law or by a provision of this Contract) caused or created by Contractor is filed against the Premises, or if any public improvement lien created or caused to be created by Contractor is filed against any assets of, or funds appropriated by the Office, then Contractor shall, within forty-five (45) days after receipt of notice of the lien, cause it to be vacated or discharged of record by payment, deposit, bond, court order, or otherwise. However, Contractor shall not be required to discharge any such lien if Contractor shall have: (i) furnished the Office with, at Contractor's option, a cash deposit, bond, letter of credit (from an institutional lender in a form satisfactory to the Office), or other security reasonably satisfactory to the Office in an amount sufficient to discharge the lien and all applicable interest, penalties and/or costs; and (ii) brought an appropriate legal proceeding to discharge the lien and is prosecuting such proceeding with diligence and continuity; except that if despite Contractor's efforts to discharge the lien the Office reasonably believes the lien is about to be foreclosed and so notifies Contractor, Contractor shall immediately cause such lien to be discharged of record or the Office may use the security furnished by Contractor in order to discharge the lien.

ARTICLE 21 - INSURANCE

21.1 General Requirements

- (a) Insurance coverage shall be provided only by an insurance carrier rated A-, Class VII or better throughout the term of this Contract. Such carrier shall be duly licensed in the State of New York.
- (b) All insurance policies and certificates shall include the following provision: "Consistent with the requirements of Contract D00XXXX, the People of the State of New York are additional insureds". Simply designating State Parks as a "certificate holder" shall not constitute compliance with this section.
- (c) All insurance coverage shall be written such that the Director's Representative is afforded at least thirty (30) days prior notice of cancellation of any insurance. No

policy shall be changed by endorsement without the knowledge and consent of the Director's Representative, and, in particular, any notice of cancellation by the insurer shall not be effective until 30 days after the said notice is actually received by the Director's Representative. Any notice shall be addressed to the Director's Representative and shall be mailed via certified or registered mail and copied to the Office's General Counsel as set forth in Article 27.2.

- (d) Before commencing the Work, the Contractor shall furnish to the Director's Representative a certificate or certificates of insurance showing that the Contractor has complied with this clause. In addition, for policies expiring on a fixed date before final acceptance, certificates of insurance showing their renewal must be filed not less than 30 days before such expiration date.
- (e) Contractor shall notify State Parks of any accidents and/or claims, including without limitation accidents or claims involving bodily injury, death or property damage, arising on or within the Premises. Such notice shall be provided in writing as soon as practicable, however in any event within five days of Contractor's receipt of notice of the accident or claim.

21.2 Liability Insurance

- (a) The Contractor shall procure at its sole cost and expense insurance with limits not less than those described below for liability for damages imposed by law, of kinds and in amounts satisfactory to the Office, covering all operations under the Contract whether performed by the Contractor or by subcontractors. Limits may be provided through a combination of primary and umbrella/excess policies.
- (b) Unless otherwise specifically provided for in the Detailed Specifications the amounts of such insurance shall be no less than \$1,000,000 combined (bodily injury and property damage) single limit per occurrence and \$2,000,000 combined in the aggregate.
- (c) Coverage shall include the following:
 - i. Contractor's Liability Insurance (including contractual liability) and Contractor's Protective Liability issued to protect the Contractor from any suits, actions, damages and costs of every name and description, with respect to all Work performed by the Contractor and his or her subcontractors under the agreement;
 - ii. Owners Protective Liability Insurance issued to protect The People of the State of New York and the Office and their officers and employees, with respect to all operations under the agreement by the Contractor or by his or her Subcontractors, including omissions and supervisory acts of the Office; and

- iii. Completed Operations/Products Liability Insurance covering liability for damages arising between the date of final cessation of the Work and the date of final acceptance of the Work by the Office.

21.3 Builder's Risk Insurance.

- (a) The Contractor shall maintain builder's risk insurance for the completed value of the Contract on the All Risk Form. Builder's Risk insurance applies only to contracts that involve buildings or structures being constructed, erected or fabricated.
- (b) In case the Office shall occupy all or any part of any building or buildings included in the Contract prior to the issuance of the final certificate of occupancy, the Contractor shall notify the fire insurance company or companies. Such occupancy by the Office shall not require consent of the insurer nor shall the insurer require any rate adjustment as a result of such occupancy.

21.4 Worker's Compensation. Proof of Compliance with Workers' Compensation Coverage Requirements: An ACORD form is NOT acceptable proof of workers' compensation coverage. A contractor seeking to enter into a contract with the Office shall provide one of the following forms prior to award:

Form CE-200, Certificate of Attestation for New York Entities with No Employees and Certain Out of State Entities, That New York State Workers' Compensation and/or Disability Benefits Insurance Coverage is Not Required.

Form C-105.2 (9/07) if coverage is provided by the contractor's insurance carrier, contractor must request its carrier to send this form to the Office, or

Form U-26.3 if coverage is provided by the State Insurance Fund, contractor must request this be sent to the Office

Form SI-12 Certificate of Workers' Compensation Self-Insurance

Form GSI-105.2 Certificate of Participation in Workers' Compensation Group Self Insurance

21.5 Disability Benefits. Proof of Compliance with Disability Benefits Coverage Requirements: An ACORD is NOT acceptable proof of disability benefits coverage. A contractor seeking to enter into a contract with the Office shall provide one of the following forms prior to award:

Form CE-200, Certificate of Attestation for New York Entities with No Employees and Certain Out of State Entities, That New York State Workers' Compensation and/or Disability Benefits Insurance Coverage is Not Required.

Form DB-120.1, Certificate of Disability Benefits Insurance

Form DB-155, Certificate of Disability Benefits Self Insurance

ARTICLE 22 - OCCUPANCY PRIOR TO COMPLETION AND ACCEPTANCE

- 22.1 The Office shall have the right to take possession of or use any completed or partially completed portion of the Work. Written notice of such possession shall be given to the Contractor by the Director's Representative. The notice shall identify the date when such possession shall commence and the area, equipment or system involved. Written notice shall also be given to the Contractor for any cessation of such possession by the State. Such possession or use shall not be deemed an acceptance of any Work. While the State is in such possession, the Contractor, notwithstanding the provisions of Article 20 of the Contract, shall be relieved of the responsibility for the risk of loss or damage to the Work except for that resulting from the Contractor's fault or negligence. If such possession or use by the State delays the progress of the Work or causes additional expense to the Contractor, an adjustment in the Contract price and/or the time of completion shall be made and the Contract modified in writing accordingly. The provisions relating to an adjustment in the Contract price or the time of completion contained in this paragraph shall not apply to occupancy or possession after Substantial Completion.

ARTICLE 23 – PAYMENT

- 23.1 The Contractor may submit monthly payment applications, or more frequently if permitted by making a request in writing to the Director's Representative, a requisition for a progress payment for Work performed and materials furnished to the date of the requisition, less any amount previously paid to the Contractor. Except as otherwise provided by this Contract, the Director's Representative shall approve and pay the requisition for the progress payment less an amount necessary to satisfy any claims, liens or judgments against the Contractor which have not been suitably discharged and less any amount authorized by law or Contract to be retained. The requisition shall be in such form and supported by such evidence as the Director's Representative may reasonably require.
- 23.2 The Contractor agrees that, if the Contract Documents for this Contract includes Performance and Payment Bonds, the State shall retain five percent of the amount of each progress payment in accordance with Section 139-f of the State Finance Law. The Contractor further agrees that, if the Contract Document for this Contract do not include Performance and Payment Bonds, the State shall retain ten percent of the amount of each progress payment in accordance with Section 139-f of the State Finance Law.
- 23.3 All requisitions for payments shall be submitted to the designated payment office. The designated payment office shall notify the Contractor of any defect in any requisition within twenty (20) days of the receipt of such requisition and shall complete the review and audit of each complete requisition within forty-five (45) days of receipt thereof.
- 23.4 The Director's Representative may refuse to approve the requisition or a portion thereof if in the Director's Representative's judgment the Contractor is failing or refusing to prosecute the Work in accordance with the Contract.
- 23.5 Payment may be made for approved materials not yet incorporated in the Work in accordance with the Schedule of Values and Section 139(f) of the State Finance Law.

Requisitions, which require payment for materials, shall be accompanied by a notarized statement certifying that the materials for which payment is requisitioned are the Contractor's property and have been suitably stored and insured. The Contractor shall provide such evidence of the value of the material stored as the Director's Representative may reasonably require. The Contractor shall have full continuing responsibility to insure and protect such materials and maintain them in proper condition to fulfill Contract requirements when installed.

- 23.6 When the Work is Substantially Completed, the Contractor shall submit to the Director's Representative a requisition for payment of the remaining amount of the Contract balance. Upon receipt of such requisition the Director's Representative shall, except as otherwise provided by this Contract, approve and pay the remaining amount of the Contract balance less two times the value of any remaining items to be completed and an amount necessary to satisfy any claims, liens or judgments against the Contractor which have not been suitably discharged. As the remaining items of Work are satisfactorily completed or corrected, the Director's Representative shall approve, upon receipt of a requisition, for these remaining items less an amount necessary to satisfy any claims, liens or judgments against the Contractor, which have not been suitably discharged.
- 23.7 The final payment will not be issued until all the labor and material required by the Contract has been furnished and completed, all disputes relating to the performance of the Contract considered and disposed of and all accounts for extra work and materials and allowances for omissions have been rendered and considered.
- 23.8 The final payment will constitute the acceptance of the Work by the Office except as to Work thereafter found to be defective. The date of such certificate shall be regarded as the date of acceptance of the Work.
- 23.9 No payment will be made to a foreign Contractor until the Contractor furnishes satisfactory proof that he or she has paid all taxes required of foreign Contractors under the provisions of the Tax Law. A foreign Contractor as used in this paragraph shall mean a Contractor denominated "foreign" by the Tax Law.
- 23.10 Acceptance by the Contractor, or by anyone claiming by or through him or her, of the final payment shall constitute and operate as a release to the State from any and all claims of any liability to the Contractor for anything theretofore done or furnished for or relating to or arising out of the work done thereunder, and for any prior act, neglect, or default on the part of the State or any of its officers, agents, or employees unless the Contractor serves a detailed and verified statement of claim upon the Office not later than 40 days after the mailing of such final payment. Such statement shall specify the items and details upon which the claim will be based and any such claim shall be limited to such items. Should the Contractor refuse to accept the final payment as tendered by the Comptroller, it shall constitute a waiver of any right to interest thereon.
- 23.11 The Contractor is advised that consistent with Subdivision 3-a, of Section 220 of the Labor Law, the filing of certified payroll records is a condition precedent to payment of any sums

due and owing to any person performing work on this project. The failure to file pursuant to this section will result in a payment delay until the filing occurs.

- 23.12 The Contractor acknowledges that it shall not receive payment on any requests for payment unless the Contractor complies with the Comptroller's electronic payment deposit procedures. Payments requested by the Contractor shall only be facilitated via electronic deposit, except where the Commissioner has expressly authorized payment by paper check.

ARTICLE 24 – AUDITS AND RECORDS

- 24.1 The Contractor shall maintain on the Site the original certified payrolls or certified transcripts thereof, subscribed and affirmed by the Contractor and all Subcontractors as true under the penalties of perjury, showing the hours and days worked by each worker, laborer or mechanic, the occupation at which he or she worked, the hourly wage rate paid and the supplements paid or provided. The Contractor shall maintain with the payrolls or transcripts thereof, the statements signed by each worker pursuant to Article 25 of the General Conditions.
- 24.2 The Director's Representative, the Comptroller and their representatives who are employees of the State shall have the right to examine all books, records, documents, and other data of the Contractor, any Subcontractor, materialmen or suppliers relating to the bidding, pricing or performance of this Contract or any change or modification thereto for the purpose of evaluating the accuracy, completeness, and currency of the cost or pricing data submitted. This right of examination shall extend to all documents necessary to permit adequate evaluation of the cost or pricing data submitted along with the computations and projections used therein.
- 24.3 The above materials shall be made available at the office of the Contractor, Subcontractors, materialmen or suppliers at all reasonable times for inspection, audit or reproduction until the expiration of six (6) years from the date of the final certificate for the Contract.
- 24.4 If this Contract is completely or partially terminated, the records relating to the Work terminated shall be made available for a period of six (6) years from the date of any resulting final settlement.
- 24.5 Records that relate to the Disputes Clause of this Contract or litigation or the settlement of claims arising out of the performance of this Contract shall be made available until the disposal of such appeals, litigation or claims.
- 24.6 The Contractor shall insert a clause containing all of the provisions of Article 24 in all subcontracts or purchase orders issued hereunder.
- 24.7 The Contractor shall make available to the Director, upon written request, all records required to be kept by Article 3-A of the Lien Law. The failure to provide said records upon the receipt of the written request shall bar any recovery for claimed extra or additional

costs under this Contract.

ARTICLE 25 – LABOR LAW AND PREVAILING WAGES NOTIFICATIONS PROVISIONS

- 25.1 In addition to any other provisions of this Contract in relation to prevailing wage rates, the Contractor shall be responsible for the certain notifications.
- 25.2 The Contractor shall post, in a location designated by the Office, a copy of the New York State Department of Labor schedules of prevailing wages and supplements for this Project, a copy of all re-determinations of such schedules for the Project, all other notices required by law to be posted at the Site, the Department of Labor notice that this Project is a public work project on which each worker is entitled to receive the prevailing wages and supplements for the occupation at which he or she is working, and all other notices which the Office directs the Contractor to post. The Contractor shall provide a surface for such notices, which is satisfactory to the Office. The Contractor shall maintain such notices in a legible manner and shall replace any notice or schedule that is damaged, defaced, illegible or removed for any reason. The Contractor shall post such notices before commencing any Work on the Site and shall maintain such notices until all Work on the Site is complete.
- 25.3 The Contractor shall distribute to each worker for this Contract a notice, in a form provided by the State, that this project is a public work project on which each worker is entitled to receive the prevailing wage and supplements for the occupation at which he or she is working. Worker includes employees of Contractor and all Subcontractors and all employees of suppliers entering the Site. Such notice shall be distributed to each worker in accordance with Labor Law 220 3-a.
- 25.4 In addition to the requirements of Appendix A, paragraph 6 entitled “Wage and Hours Provisions”, the Contractor is responsible for any additional costs related to new determinations of the wage rates. The annual determination of the prevailing rates of wages and supplements are usually published on May 31st of each year and are in effect July 1st through June 30th. New determinations shall supersede the original schedule or any prior issued annual determination. Any rate change from a previously issued determination becomes effective July 1st, regardless of whether the new determination has been received by the Contractor.

ARTICLE 26 - STATUTORY REQUIREMENTS FOR RESTRICTIONS ON CONTACTS DURING THE PROCUREMENT PROCESS AND DISCLOSURE OF CONTACTS AND RESPONSIBILITY OF OFFERERS MISCELLANEOUS PROVISIONS

- 26.1 New York State Finance Law §139-k requires that every procurement contract award subject to the provisions of State Finance Law §139-k or §139-j shall contain a certification by the Offerer that all information provided to the procuring governmental agency with respect to State Finance Law §139-k is complete, true and accurate. The Contractor shall provide that certification in his or her contract or agreement.

26.2 New York State Finance Law

- 26.2.1 New York State Finance Law § 139-k(2) requires the Office to obtain specific information regarding prior non-responsibility determinations. This information must be collected in addition to the information that is separately obtained pursuant to State Finance Law § 163 (9). In accordance with State Finance Law § 139-k, an Offerer must be asked to disclose whether there has been a finding of non-responsibility made within the previous four (4) years by any Governmental Entity due to: (a) a violation of State Finance Law § 139-j or (b) the intentional provision of false or incomplete information to a Governmental Entity.
- 26.2.2 As part of its responsibility determination, State Finance Law § 139-k(3) mandates consideration of whether an Offerer fails to timely disclose or complete information regarding the above non-responsibility determination. In accordance with law, no procurement contract shall be awarded to any Offerer that fails to timely disclose accurate or complete information under this section, unless a finding is made that the award of a procurement contract to the Offerer is necessary to protect public property or public health safety, and that the Offerer is the only source capable of performing the required Work within the necessary timeframe. The required forms to be completed by the Offerer must be submitted to the Office.

ARTICLE 27 – MISCELLANEOUS PROVISIONS

- 27.1 Commencement of Actions: The time, as prescribed by law, within which an action on the contract against the Contractor must be commenced shall be computed from the date of completion of physical work. The Contractor shall notify the Office in writing that the physical work of the contract has been completed by specifying a completion date, which date shall be no more than thirty days prior to the date of such notice. The completion date set forth in such notice shall be deemed the date of completion of the physical work unless the Office, within thirty days of receipt of such notice, notifies the Contractor of a dispute in writing. Any notice pursuant to this paragraph shall be sent by the Contractor by Certified Mail and sent to the parties set forth in the Notice provision of this Article.
- 27.1.1 In the event that the Contractor fails to provide notice as set forth herein or the Office disputes the completion date in the manner provided for herein, the date of completion of the physical work shall be determined in any other manner provided by law.
- 27.1.2 Choice of Law/Damages: This Contract shall be governed and interpreted in accordance with the laws of the State of New York. Any and all claims against the State, the Office, its Commissioner, employees, officers or agents arising out of this Contract shall be limited to money damages and commenced exclusively in, and subject to the jurisdiction of the New York State Court of Claims or any other

court of competent jurisdiction located in Albany County, New York. Any such claim shall not be removed to federal court.

27.2 Notice

- (a) Unless otherwise indicated in these General Conditions, all notices permitted or required hereunder shall be in writing and shall be transmitted either:
- i. via certified or registered United States mail, return receipt requested;
 - ii. by facsimile transmission;
 - iii. by personal delivery;
 - iv. by expedited delivery service; or
 - v. by e-mail.

Such notices shall be addressed as follows or to such different addresses as the parties may from time-to-time designate:

If to the Office:

Capital Unit
New York State Office of Parks, Recreation and Historic Preservation
Albany, NY 12238
Phone (518) 473-7435
Fax: (518) 486-2372
E-Mail Address: capital@parks.ny.gov

and

General Counsel
New York State Office of Parks, Recreation and Historic Preservation
Albany, NY 12238
Phone (518) 486-2921
Fax: (518) 474-5106
E-Mail Address: counsel@parks.ny.gov

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

- (c) The parties may, from time to time, specify any new or different address in the United States as their address for purpose of receiving notice under this Contract by giving fifteen (15) days written notice to the other party sent in accordance herewith. The parties agree to mutually designate individuals as their respective representatives for the purposes of receiving notices under this Contract.. Additional individuals may be designated in writing by the parties for purposes of implementation and administration/billing, resolving issues and problems and/or for dispute resolution.
- 27.3 Severability: If any provision, term or condition of this contract is held to be invalid, illegal, or unenforceable, such determination shall not affect the validity, legality or enforceability of any other part of this Contract and the remaining parts of this Contract shall be enforced as if the invalid, illegal or unenforceable provisions, terms or conditions are not contained herein.
- 27.4 Integration Clause: This Contract shall not be materially amended, changed or otherwise modified except in writing signed by both parties and approved by the Attorney General and Office of the State Comptroller. Except to the extent that documents are incorporated herein by reference, this Contract constitutes the entire agreement between the parties concerning the subject matter hereof and supersedes all prior agreements and understandings of the parties in connection therewith. No covenant, representation or condition not expressed herein shall be effective to interpret, change or restrict the express provisions of this Contract.

APPENDICES

- 28.1 The following appendices are attached hereto and hereby made a part of this agreement as if set forth fully herein.
 - (a) Appendix A, Standard Clauses for All New York State Contracts;
 - (b) Appendix B

APPENDIX A

STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS

PLEASE RETAIN THIS DOCUMENT
FOR FUTURE REFERENCE.

June 2023