



SDVOB SET ASIDE:

THIS SOLICITATION IS OPEN TO NYS CERTIFIED SERVICE-DISABLED VETERAN BUSINESSES ONLY.

RFP # 2024-12

Port of Albany Loading Dock Exterior Wall Repair/Resurface

ISSUE DATE: November 25, 2024

NOTICE TO BIDDERS:

The Albany Port District Commission is requesting sealed proposals for Loading Dock Exterior Wall Repair and Resurfacing at the Port of Albany located at 106 Smith Blvd. Albany, NY 12202. Further information is contained in the Request for Proposal (2024-0) and may be obtained from the APDC by calling 518-463-8763.

Responses are due by **12:00 PM noon on Friday January 24, 2025** at which time they will be opened and publicly read.

The Albany Port District Commission (APDC) invites qualified vendors to submit a proposal and statement of qualifications for masonry services. The qualified Vendor will enable the APDC to improve operational effectiveness, enhance quality of services, minimize support costs, and maximize economic development in the region. A contract will be awarded on a "best value" basis. The APDC places great emphasis on the experience, skill-set, and long-term viability of the vendor.

**Albany Port District Commission
Richard Hendrick, Chief Executive Officer**

APDC Mission Statement: The APDC strives to responsibly and effectively manage the publicly owned maritime Port of Albany-Rensselaer, driving the economy of the Capital Region and beyond while emphasizing transparency and public stewardship.

SUMMARY

Located on the Upper Hudson River 124 nautical miles north of New York Harbor, the Port of Albany is the largest inland Port in the Northeast United States. The Port consists of 450 acres on the east and west sides of the Hudson River across four municipalities including Albany, Bethlehem, Rensselaer, and East Greenbush.

The Port of Albany/Rensselaer has been a historic transportation hub since the city was founded over 300 years ago. The Hudson River provides access to the state's extensive canal system. Area roadways connect with major interstate highways. Rail lines deliver cargo in close proximity to any location in North America. The Port has dedicated maritime operations on both sides of the Hudson River and connects New York State's Capital Region to the world.

Primary cargo handled at the Port includes bulk and break bulk, including heavy lift/project cargo, wood pulp, grain, scrap iron and molasses. We work together with maritime operations, the Albany Port Railroad and tenants to ensure the efficient, reliable and safe movement of goods.

An economic impact study of the Port of Albany measured the Port's overall economic impact on New York State at more than \$813 million. The measure of the Port's significance to the Regional economy in terms of output was more than \$428 million.

The Port of Albany (APDC) has secured funds from the New York State Department of Transportation Maritime Freight Handling Expansion Grant to assist with improvements and enhancements to the Port of Albany maritime terminal. The project goal within this funding is to equip the Port and therefore the region with sufficient heavy lift capacity to meet the increasing demands of freight and maritime cargo needs.

The projects funded under this grant include the rehabilitation of a maritime shed, reconstruction of adjacent rail, expanding maritime cargo handling area, as well as roof replacement, loading dock exterior wall resurfacing, and lighting and electrical upgrades to maritime sheds at the Port of Albany.

PURPOSE AND OBJECTIVES

Purpose: The intention of this RFP is to solicit responses and formal proposals from qualified masonry companies and select a single organization to provide loading dock concrete exterior wall repair and resurfacing services to the APDC.

Objective: The APDC's primary objective is to repair and resurface the dock exterior walls on sheds #4 and #5. Shed #4 is a 34,000 sq ft. storage facility used to store materials awaiting transport. Shed #5 is a 29,000 sq. ft. storage facility also used to store materials for transport. The concrete loading dock exterior walls are deteriorating and have visible signs of rebar and spalled concrete. Dock protection bumpers are also needed to protect them from truck damage. The sheds sit along the wharf and are adjacent to heavy on-dock rail inside the Maritime Terminal located on Smith Blvd Albany, NY 12202.



Solution Preferences: Based on the APDC's research and preferences, the APDC has decided to repair and resurface the dock exterior wall loading in order to maintain the stability and efficiency of the dock loading area.

SCHEDULE OF EVENTS

<u>EVENT</u>	<u>DATES</u>
SOLICITATION OPEN RFP POSTED ON THE PORT’S WEBSITE, BIDNET, TIMES UNION AND THE NYS CONTRACT REPORTER	November 25, 2024
WRITTEN INQUIRIES Must be emailed to jlansing@portofalbany.us	WRITTEN INQUIRY DEADLINE: January 10, 2025 No later than 5 p.m.
RESPONSE TO WRITTEN INQUIRIES Responses to all questions will be sent in the form of an addendum to all parties and posted to the APDC website,	RESPONSE Provided by APDC DEADLINE: January 14, 2025 No later than 5pm.
Mandatory Pre-Bid Meeting and Walk-Through RSVP to jlansing@portofalbany.us or 518-469-8763	Thursday January 16, 2025 10:00 AM 106 Smith Blvd. Albany, NY 12202
RFP DUE DATE Proposals will be opened and evaluated for accuracy and eligibility. Awards are expected to be announced within (30) thirty days.	PROPOSALS DUE: Friday January 24, 2025 No later than 12 noon

Please note: other than the contact person identified in the proposal, or their designee, prospective proposers shall not approach APDC employees or APDC Board Members during the period of this RFP process about any matters related to this RFP or any other proposals submitted thereto.

Questions about or clarifications to the technical specifications must be made in writing to the lead contact, Jessica Lansing, Compliance Procurement Coordinator, at jlansing@portofalbany.us

Prevailing Wage

Any work done pursuant to this contract is subject to the New York State prevailing wage requirements which can be found in Article 8 of the New York State Labor Law. Under Article 8 of the NYS Labor Law, the Department of Labor has assigned a Prevailing Rate Case Number

PRC# 2024014642- Concrete Repair has been assigned to the project.

To access the PDF file of your schedule, click on <https://apps.labor.ny.gov/wpp/publicViewProject.do?method=showIt&id=1580120> or copy and paste into your browser

Vendors will be required to submit all required paperwork to the Department of Labor upon award of contract.

SCOPE OF WORK:

The concrete loading docks for Sheds #4 and #5 are used daily to load pulp and other cargo on tractor trailers. Several areas of the dock wall are showing signs of deterioration. Cracked and spalled concrete is visible. Repairs are needed to protect the concrete from further deterioration.



Scope:

The work area consists of repair and parging 2800 ft.² of spalled and cracked concrete on the fascia of the truck loading docks for sheds four and five.

The work limits will start at the north end of shed four and end at the south end of shed five. Both sheds are connected with a fire wall between them.

1. Hand application of concrete repair materials should be used to reinstate spalled or delaminated concrete. Larger and deeper repairs may be more conducive to the use of form-and-pump, form-and-pour, or spray application methods. Vendors should state in their proposal suggested methods, materials, and manufacturer recommendation sheets.
2. The vendor is responsible for NYSDOL and OSHA compliance and is responsible for worker's safety. All work shall be accomplished in accordance with The New York State Department of Transportation Standard Specifications 2023 with the most current amendments, ACI 318-19 Building Code Requirements for Structural Concrete, ACI 318R-19 Commentary, ACI 562 Assessment, Repair, and Rehabilitation of Existing Concrete Structures.
3. Be sure that necessary equipment and tools are on site and in proper working order. Have backup equipment or alternate methods planned and available.
4. Concrete removal and edge conditioning
5. Surface cleaning
6. Treatment of exposed reinforcement
7. Substrate saturation
8. Apply the repair material following the manufacturers' recommendations
9. Finish and cure the repair.
10. Vendors should include in their proposal any additional work steps they deem necessary to complete the scope.
11. **ADDITIONAL OPTION:** Installation of dock protection bumpers (please quote separately) Rectangular, 32 1/2 in Bumper Wd, 6 in Bumper Ht, 4 1/2 in Bumper Dp, Laminated Rubber 3 bumpers per door required.
12. Vendors should comply with and refer to the following for additional information:
 - American Concrete Institute (ACI)
 - ACI 201.1R-08—Guide for Conducting a Visual Inspection of Concrete in Service
 - ACI 308R-16—Guide to Curing Concrete
 - ACI 364.1R-07—Guide for Evaluation of Concrete Structures before

Rehabilitation

- ACI 364.7T-02(11)—Evaluation and Minimization of Bruising (Microcracking) in Concrete Repair
- ACI 364.10T-14—Rehabilitation of Structure with Reinforcement Section Loss
- ACI 515.2R-13—Guide to Selecting Protective Treatments for Concrete
- ACI 546R-14—Concrete Repair Guide
- ACI 546.3R-14—Guide to Materials Selection for Concrete Repair
- ACI RAP 8—Installation of Embedded Galvanic Anodes
- ASTM International
- ASTM C309-19—Standard Specification for Liquid Membrane-forming Compounds for Curing Concrete
- ASTM C1315-19—Standard Specification for Liquid Membrane-forming Compounds Having Special Properties for Curing and Sealing Concrete
- ASTM C1583/C1583M-13—Standard Test Method for Tensile Strength of Concrete Surfaces and the Bond

Strength or Tensile Strength of Concrete

- Repair and Overlay Materials by Direct Tension (Pull-Off Method)
- International Concrete Repair Institute
- ICRI No. 120.1-2009—Guidelines and Recommendations for Safety in the Concrete Repair Industry
- ICRI No. 210.3-2013—Guide for Using In-Situ Tensile Pull-Off Tests to Evaluate Bond of Concrete Surface Materials
- ICRI No. 310.1R-2008—Guide for Surface Preparation for the Repair of Deteriorated Concrete Resulting from Reinforcing Steel Corrosion
- ICRI No. 310.2-2013—Guide for Selecting and Specifying Concrete Surface Preparation for Sealers, Coatings, Polymer Overlays, and Concrete Repair
- ICRI No. 320.5R-2014—Pictorial Atlas of Concrete Repair Equipment
- ICRI No. 510.1-2013—Guide for Electrochemical Techniques to Mitigate the Corrosion of Steel for Reinforced Concrete Structures

RECEIPT OF PROPOSALS:

Proposals shall be clearly labeled with the title of the project listed on the sealed bid RFP #2024-0 to prevent the bid from being opened before the opening date. Those submitting proposals do so entirely at their expense. Submission of any proposal indicates acceptance of the conditions and terms stated herein unless clearly and specifically noted otherwise. The APDC reserves the right to reject any and all proposals, in whole or in part, submitted in response to this RFP. Proposals will be examined and evaluated by APDC staff.

- A. Sealed proposal packages must be received by APDC, at its offices located at 106 Smith Boulevard, Albany, New York, 12202, **NO LATER THAN noon on Friday January 24, 2025.** Bid packet must be clearly labeled **RFP 2024-12** and include title of bid, company name, and date and time of bid opening.
- B. Vendors are responsible for submitting their bids to the exact location indicated on the “Notice to Bidders” prior to the time indicated in the “Notice to Bidders”. No bids will be accepted after the designated time indicated in the “Notice to Bidders”. NOTE: This includes any changes listed on the latest addendum issued by the APDC, if any. **Delay in mail delivery is not an exception to the deadline for receipt of bids.**
- C. All proposals and accompanying documentation will become APDC property and will not be returned.
- D. Vendors are solely responsible for all costs incurred by preparing or submitting a bid, or otherwise responding to this RFP, or any negotiations incidental to its bid acceptance thereof.
- E. An official authorized to commit the company to a contract must sign the proposal and all related proposal documents.
- F. Emailed proposals will **NOT** be accepted for this bid opening. Proposals shall be hand delivered or mailed to the address located on page three of this solicitation.
- G. **Three (3) copies** of all bids shall be submitted, **ONE SET OF WHICH MUST CONTAIN ORIGINAL SIGNATURES**, including completed copies of any forms or certifications required for this RFP. Failure to respond to an RFP on any official form included in this RFP may result in disqualification of a bid as non-responsive. No bid form will be accepted which contains any additions, omissions, or erasures. Each bid shall be properly executed and signed by the bidder. Illegible, conditional bids and unsigned bids will be rejected as non-responsive.
- H. Vendors must notify APDC of any omissions, contradictions, or conflicts in consistency with the written inquiry due date noted in the event schedule of this document. APDC will provide necessary corrections or additions to plans and specifications by addendum. If Vendor does not notify APDC of any such condition it will be assumed that the vendor has included the necessary items in the bid to complete the specification.

PROPOSAL RESPONSE INSTRUCTIONS:

Vendors are required to prepare their proposals per the below outline.

1. Provide a straightforward, concise description of the vendor's capabilities to satisfy the requirements of this RFP.
2. Provide the name of your company and the names of the companies in your team if you are including subcontractors or joint ventures.
3. Provide a name and title of the person(s) authorized to bind the vendor, together with the main office address and telephone number.
4. Provide a scope of services which shall include a summary of the work being proposed.
5. Provide a schedule to perform work noting when the work should be complete.
6. Provide a lump sum bid identifying the total price which shall include, but not limited to the following: equipment, fuel, travel, materials, labor, disposal of waste, all permits, insurance and bonds (e.g., the APDC will not pay any additional fees other than that provided within the bidder's proposal).
7. Provide a bid bond in the amount of 5% of the bid proposal.
8. Provide the minimum of three references. Including references for work similar to the work being proposed in this solicitation.
9. Complete, sign and notarize all requested forms within this RFP.
10. Vendors submitting alternate pricing products or services must do so as a separate bid package to be considered for award. Each bid must be submitted under separate cover and will be considered on its own merits.
11. The APDC is subject to New York State's Freedom of Information Law (FOIL). Should your submission to this RFP contain "trade secrets", or other information that the disclosure of which could reasonably be expected to be harmful to business interests, you must ensure that such information is clearly identified and marked as such. Identification must be specific by item or paragraph. Should marked information be the subject of a request under FOIL, you may be requested to either consent to the request or make representation explaining why the information should not be disclosed.

SERVICE STANDARDS:

- The contractor shall provide all labor, machinery, powered equipment, materials, tools, scaffolds, fencing, equipment, cranes, lifts, generators, and miscellaneous tools/equipment/machinery to complete the scope of work.
- Copies of certified payrolls from all subcontractors must be attached and submitted with all invoices. No payment will be made for any invoices without a copy of certified payroll. The APDC has a 30-day pay policy. No more than one pay submittal will be processed within a 30-day period. The contractor will be required to submit to the Port copies of all insurance certificates.
- The contractor shall adhere to local building codes, laws and regulations where mandatory. The contractor shall conform to New York state industrial code 23 and OSHA standards and regulations, and all other federal, State, and local codes and regulations, including all utility company requirements.
- Contractor Methods, Procedures, Equipment: Where methods or procedures are specified, they shall constitute minimum measures and shall in no way relieve the contractor of sole responsibility for the means, methods, techniques, sequences, or safety measures in connection with the work. Contractor's service persons shall have tools and equipment common to the trade that may be necessary to perform required work. The Port will not pay for rental or replacement of any of common tools and consumables associated with the type of work outlined in this contract. The contractor shall protect all existing and new equipment from damage from soot, scale, residue and other construction debris. The contractor shall clean, repair, and/or replace any damage at no additional cost to the APDC, that results from the contractor's non-compliance with this item.
- Deliveries shall be made on regular business days between the hours of 8:00 am and 5:00 pm unless otherwise agreed to by the contractor and APDC.
- The awarded bidder may deliver and/or stockpile directly on site, however, it shall be the sole responsibility of the bidder to take care of and protect their materials and supplies. The APDC will not be responsible for any damage or theft of any materials or supplies.
- Any deviations from the Technical Specifications, Contract, Drawings and/or General Conditions will not be permitted unless prior approval by APDC has been given.
- It is the intent that this be a completed project as far as the contract documents set forth. It is not the intent that different phases of work on this project be delegated to various trades and subcontractors by the contract documents. Contractors must make own contracts with various subcontractors, setting forth the work these subcontractors will be held responsible for. Contractor alone will be held responsible to APDC for the completion of this project.
- It is the contractor's responsibility during the course of the work to bring to the attention of APDC any defective materials discovered that were not previously identified.
- The successful contractor shall be responsible for securing at their own expense all licenses and permits required for this project including, but not limited to utility connections, buildings and site construction, prior to commencement of work.
- A 5% performance bond will be required at time of contract execution. Retainage will be applied.

GREEN MARINE

The Port of Albany strives to conduct all activities in a sustainable manner defined as environmentally responsible, community driven, and economically beneficial. Acting for the environment is not only important for the Hudson River watershed and neighboring communities, but for sustaining the Port's operations in the long run. In 2016, the Port of Albany joined the Green Marine Program, a voluntary environmental certification. As a landowner, we must lead by example and thus we encourage all bidders to utilize the best environmental practices, materials, and products.

MWBE/SDVOB PARTICIPATION GOALS

THIS PROCUREMENT IS AN SDVOB SET ASIDE AND THE POOL OF BIDDERS IS LIMITED TO NYS CERTIFIED SDVOBS.

Pursuant to **New York State Executive Law Article 15-A**, the APDC recognizes its obligation under the law to promote opportunities for maximum feasible participation of certified minority- and women-owned businesses (MWBEs) in the performance of APDC contracts. The APDC advises all potential service providers that disadvantaged, minority and women-owned business enterprises will be afforded full opportunity to submit proposals in response to this notice and there will be no discrimination on the basis of race, creed, color, sex, national origin, disability or marital status in the award of the contract or any subcontract.

For purposes of this contract, however, MWBE goals for participation will not be established.

Veteran's Services Law Article 3 provides for more meaningful participation in public procurement by certified Service-Disabled Veteran-Owned Businesses ("SDVOBs"), thereby further integrating such businesses into New York State's economy. The APDC recognizes the need to promote the employment of service-disabled veterans and to ensure that certified service-disabled veteran-owned businesses have opportunities for maximum feasible participation in the performance of APDC contracts. In recognition of the service and sacrifices made by service-disabled veterans and in recognition of their economic activity in doing business in New York State, Bidders are strongly encouraged and expected to consider SDVOBs in the fulfillment of the requirements of the Contract. Such participation may be as subcontractors, as protégés, or in other partnering or supporting roles.

The directory of New York State Certified SDVOBs can be viewed at: <https://ogs.ny.gov/Veterans/>.

METHOD OF AWARD:

The award of this solicitation will be given to the responsive and responsible respondent based on “best value”. When evaluating proposals, the following selection criteria, with the accompanying weightings, will be considered and used to calculate an overall proposal score:

CRITERIA 1: Experience, Knowledge, and References- 40% The vendor has relevant experience and qualifications as presented within their proposal.

CRITERIA 2: Rates and Value of Costs - 50% The costs of services as compared to other vendors who’ve submitted proposals and the willingness of the vendor to minimize costs.

CRITERIA 3: Timeline of Project Scope to Completion- 5% Provide a schedule indicating workforce plan and target completion dates.

CRITERIA 4: Proposal Response - 5% The proposal is organized, completed, and of quality. The proposal demonstrates an understanding of the needs of the APDC.

- In cases where two or more responsive/ responsible bidders submit identical bids as to price, the APDC may award the contract to any such bidders.
- The APDC reserves the right to request additional information from bidders for the purpose of ascertaining whether or not the qualifications, facilities, and pricing offered by each bidder meet the requirements set forth in these specifications, sufficient to ensure the proper performance under the contract.
- APDC reserves the right to conduct discussions with any Vendor who submits a proposal.
- APDC reserves the right to reject any and all proposals, to waive any informality in proposals received, to accept or reject any or all of the items in the proposal, and to award the contract in whole or in part and/or negotiate any or all items with individual Vendors if it is deemed in APDC’s best interest. Moreover, APDC reserves the right to not make a selection if proposals are deemed to be outside the fiscal constraint or not in the best interest of APDC

AWARD OF BID

The award, if any, will be made within (30) thirty calendar days of the opening date. All successful vendors shall be notified by the APDC of any contracts they have been awarded. An award letter will be sent to all successful Vendors by US mail. Unsuccessful bidders may not be informed.

TERM OF CONTRACT

All Vendors submitting proposals shall agree that their pricing will remain firm for 60 days from proposal submission and throughout the duration of the contract.

The term of the contract shall be through project completion. This contract and any potential renewals will be executed upon approval of the APDC Board of Commissioners.

TERMINATION CLAUSE

The APDC reserves the right to terminate any contract and use an alternate or secondary source, should the awarded Vendor become unable to perform. The APDC may terminate their contract with cause upon notification in writing. The APDC may further terminate the contract without cause on thirty (30) days’ notice in writing.

REQUIREMENTS and GOVERNING LAWS

All bidders are required to comply with all applicable provisions of all local laws, the State of New York laws, and the United States of America laws in particular but not limited to the State's Labor Law, Workman's Compensation Law, State Unemployment Insurance Law, Environmental Law, and all State and Local Health Laws, rules and regulations.

1. All Vendors submitting proposals shall agree that their pricing will remain firm for 60 days from proposal submission and throughout the duration of the contract.
2. The Vendor shall not reassign any award made as the result of this RFP without the prior written consent from APDC.
3. The Vendor shall comply with all laws, ordinances, rules, regulations bearing on the conduct of the work specified in this RFP.
4. TAX ON MATERIALS: The APDC is exempt from Federal and State Sales Taxes. Such Taxes shall not be included within the bid prices or within invoices.
5. The provisions of Section 220 of the State's Labor Law are deemed a part of every proposal with the same force and effect as if set forth at length. Pursuant to Article 8 of the New York State Labor Law, no laborer, workman, or mechanic in the employ of the contractor, subcontractor, or other person doing or contracting to do the whole or part of the work contemplated by the contractor shall be permitted or required to work more than eight (8) hours in any one (1) calendar day or more than five (5) days in any week, except on cases of extraordinary emergency including fire, flood, or danger to life or property. No such person shall be employed more than eight (8) hours in any day or than five (5) days in one week except in such emergency. The wages to be paid for a legal day's work to laborers, workman or mechanic employed by the contractor, subcontractor, or other person performing the contract shall be provided the supplements required by that Article.
6. EMPLOYEE VERIFICATION REQUIREMENTS: All vendors providing services and/or products to the APDC under any contract resulting from an award of the attached bid are required to comply with all State, Federal, and local laws, rules and regulations as they pertain to the verification of the ability of each employee to legally work in this state and country. This includes all employees, subcontractors and their employees engaged in work covered by said contract. All vendors shall, upon request, supply the APDC with certified copies of Federal form I-9 for all employees, subcontractors, and their employees. These forms should be on file at the vendor's home office are available online at <http://usics.gov/files/form/i-9.pdf>. By submitting a bid for consideration by the APDC the vendors acknowledge that they have complied with and will continue to comply with all regulations and statutes concerning the verification of the employee status.
7. INDEMNIFICATION: The successful proposer shall defend, indemnify, and save harmless the APDC, its employees and agents, from and against all claims, damages, losses, expenses (including without limitations, reasonable attorneys' fees) arising out of, or in consequence of, any negligent or intentional act or omission of the successful proposer, its employees or agents, to the extent of its or their responsibility for such claims, damages, losses, and expenses.

8. **JUDGEMENTS/LEGAL FINDINGS:** By submitting this bid for consideration, the vendor affirms that they currently have no judgments or other legal findings nor have any pending judgments or other legal findings against the company, its executives or any other person that will be employed in any fashion as a part of this contract, with any federal, state, or local government entities that in any way could impact or have the potential to impact their ability to legally complete any contract awarded them as a result of this bid. Failure to disclose any such judgments and or findings will result in the termination of any contracts and other penalties as deemed legal and appropriate by the APDC.
9. **INSPECTION:** Inspection and approval by the Owner, of finished Work or of Work being performed, or of materials and equipment at the place of manufacture or preparation, shall not relieve the Contractor of its obligation to perform the Work in strict accordance with the Contract or of its obligation to protect its Employees from injury or harm for work performed under this Contract. Finished or unfinished Work not found to be in strict accordance with the Contract shall be replaced as directed by the Owner, even though such Work may have been previously approved and paid for. Such corrective work is Contract Work and shall not be deemed Extra Work.
 - a. Rejected Work and materials shall be promptly taken down and removed from the Site, which must at all times be kept in a reasonably clean and neat condition.
 - b. Nothing herein shall be interpreted to mean that the inspection authority provided to the APDC creates any obligation or duty on the APDC to protect the safety of Contractor's or Subcontractors Employees or to protect the safety, integrity or condition of any property, as said obligations and duties rest solely with the Contractor or Subcontractor.
10. **RESPONSIBILITY OF VENDOR:** The vendor shall be responsible for all labor, material, tools, supervision, and transportation to complete the scope of the work related to this project. The vendor shall adhere to all applicable local, state, and federal regulations in effect at the time the work is done. The vendor shall maintain all required insurance coverage during the life of the contract.
11. **USE OF BRAND NAMES:** References in the specifications to a particular trade name, manufacturer's catalog or model number are made for descriptive purposes to guide the bidder in interpreting the type and quality of materials or supplies or nature of work desired. Such descriptions should not be construed as excluding bids on other types of materials and supplies or for performing the work in a manner other than specified, providing that the materials and supplies and manner of performing the work are offered are of equal quality to that specified and equally acceptable to the APCD for its purposes. Exceptions must be clearly stated. The APCD will determine equal products or services.
12. **GUARANTEE:** The contractor shall guarantee that the material/equipment offered is standard new equipment, latest model of regular stock product and in current production and includes all parts regularly used with this type of equipment also that no attachment or part has been substituted or applied contrary to manufacturer's recommendations and standard practice.
13. The successful vendor must comply with all clauses stated in Appendix A (NYS Clauses for Standard Contracts)
14. The successful vendor must comply with all clauses stated in Appendix B (the NYSDOT PFRAP contract document)

INSURANCE REQUIREMENTS

The successful Vendor hereby agrees that they will obtain and present proof of Workers' Compensation Insurance for all employees on- site prior to the commencement of work (e.g., independent (employee) contractors are not acceptable). This contract shall be void and of no effect unless the Contractor secures and delivers a certification of insurance dated within ten (10) days of the date of the signing of the contract, and Contractor shall maintain such insurance policies as will protect themselves, their subcontractors and, unless specified otherwise, the APDC (the owner), including their agents, servants and employees, from any and all claims for Bodily Injuries, Death or Property Damage which may arise from operations under this contract whether such operations be by himself/herself or by any subcontractor or anyone employed by him/her directly or indirectly, or any other party who may be injured, claim injuries or die. All policies shall name the Albany Port District Commission as an additional insured on a primary and non-contributory basis. The below policies are required to be maintained for the life of the contract.

The successful bidder will maintain Worker's Compensation during the life of any contract entered as a result of this bid, for the benefit of the bidder's employees.

The following insurance policies are required:

- (1) Workers' Compensation Insurance with statutory limits and employers' liability coverage.
- (2) General liability insurance including comprehensive form, premises- operations and broad form contractual with minimum limits of One Million Dollars (\$1,000,000) each occurrence and Two Million Dollars (\$2,000,000) annual aggregate.
- (3) Automobile liability insurance for owned, hired, and non-owned vehicles with minimum limits of not less than One Million Dollars (\$1,000,000) combined single limit for bodily injury and property damage.
- (4) Umbrella or Excess liability insurance with a limit of Five Million Dollars (\$2,000,000) per occurrence and a general aggregate of Five Million Dollars (\$2,000,000).
- (5) Disability Benefits- New York State Statutory Requirements.

In addition to any other forms of insurance or bonds required under the terms of the contract and specifications, the GRANTEE's Contractor will be required to carry insurance of the following kinds and amounts:

(see next page)

The Albany Port District Commission shall be listed as an additional insured on a primary and noncontributing basis on all policies.

All insurance certificates shall be submitted prior to commencement of work.

Additional Insurance Requirements in compliance with NYSDOT Grant Funded Projects:

- a. Public Liability Insurance (already stated on previous page)
With respect to the operations performed, regular Contractor's Public Liability Insurance is provided for a limit of not less than \$2,000,000. Single Limit, Bodily Injury and/or Property Damage combined, for damages arising out of bodily injuries to or death of all persons in any one occurrence and for damage to or destruction of property, including the loss of use thereof, in any one occurrence.

- b. Protective Public Liability Insurance
With respect to the operations performed, subcontractors provide regular Contractor's Protective Public Liability Insurance for a limit of not less than \$2,000,000. Single Limit, Bodily Injury and/or Property Damage combined, for damages arising out of bodily injuries to or death of all persons in any one occurrence and for damage to or destruction of property, including the loss of use thereof, in any one occurrence.

- c. Motor Vehicle Liability Insurance
With respect to any motor vehicles which may be used in connection with the work to be performed, the Contractor shall maintain a policy(s) as required by the Motor Vehicle Laws of the State of New York to bear license plates.

The insurance hereinbefore specified shall be carried until all work required to be performed under the terms of the Agreement is satisfactorily completed and formally accepted. Failure to carry or keep such insurance in force until all work is satisfactorily completed shall constitute a violation of the Agreement.

PROPOSAL COMMUNICATION , RESTRICTIVE PERIOD, LEGAL PROVISIONS FOR PROCUREMENT CONTRACTS, AND OFFERER RESPONSIBILITY:

Pursuant to New York State Finance Law §§139-j and 139-k, this request for proposals (“RFP”) includes and imposes certain restrictions on communication between a Governmental Entity and an Offeror/Bidder during the procurement process. An Offeror/Bidder is restricted from making contacts from the earliest notice of intent to solicit offers through final award and approval of the Procurement Contract by the APDC and, if applicable, Office of the State Comptroller (“restricted period”) to other than designated staff unless it is a contact that is included among certain statutory exceptions set forth in State Finance Law §139-j (3) (a). The designated staff member for this RFP is (Jessica Lansing, Compliance Procurement Coordinator.) Governmental Entity employees are also required to obtain certain information when contacted during the restricted period and make a determination of the responsibility of the Offeror/Bidder pursuant to these two statutes. Certain findings of non-responsibility can result in rejection of a contract award and in the event of two findings within a four-year period, the Offeror/Bidder is debarred from obtaining governmental Procurement Contracts. Further information about these requirements can be found in the appropriate statutes and on the New York State Office of General Services website under the link for the “Advisory Council on Procurement Lobbying.”

Additionally, the above law requires certain affirmations to be provided to the APDC by Offerors/Bidders and that certain provisions are contained within any contract/award resulting from this RFP. Specifically, the following information is provided:

1. All bidders must complete a “Bidder Questionnaire” with a signature/notary public acknowledgement.
2. The APDC must obtain from all Offerors/Bidders the required affirmation of understanding and agreement to comply with procedures on procurement lobbying restrictions regarding permissible contacts in the restricted period for a procurement contract in accordance with New York State Finance Law §§139-j and 139-k.
3. The APDC must include a disclosure request regarding prior non-responsibility determination in accordance with New York State Finance Law §139-k in its solicitation of proposals or bid documents or specifications or contract documents, as applicable, for procurement contracts.
4. The APDC must obtain from all Offerors a required certification that the information is complete, true, and accurate regarding any prior findings of non-responsibility, such as non-responsibility pursuant to New York State Finance Law §139-j. The Offeror/Bidder must agree to the certification and provide it to the procuring Government Entity.
5. New York State Public Authority Law § 2878 requires that all bidders on procurements involving goods and services complete a “Non-Collusive Bidding Certification.”
6. New York State Law §139-k (5) provides that every procurement contract award subject to the provisions of New York State Finance Law §§139-k and 139-j shall contain a provision authorizing the Governmental Entity to terminate the contract in the event that the certification is found to be intentionally false or intentionally incomplete. An example of such language is provided below:

The APDC reserves the right to terminate this contract in the event it is found that the certification filed by the Offeror in accordance with New York State Finance Law §139-k was intentionally false or intentionally incomplete. Upon such finding, the APDC may exercise its termination right by providing written notification to the Offeror in accordance with the written notification terms of this contract.

Forms meeting the requirements of 1-6 are provided below. All bids submitted must contain these completed forms to be considered responsive – failure to include any of these forms will result in the bid being rejected without any further review or consideration.

ALL ENCLOSED FORMS MUST BE COMPLETED, SIGNED AND INCLUDED WITH THE BID PROPOSAL
Failure to Complete ALL forms and ALL Insurance Certificates may result in rejection of bid proposal.

FORMS

BID PROPOSAL FORM

EXHIBIT A : BIDDER'S QUESTIONNAIRE

EXHIBIT B : CORPORATE PARTNERSHIP OR INDIVIDUAL ACKNOWLEDGEMENT

EXHIBIT C: APDC PERMISSIBLE CONTACTS

EXHIBIT D: OFFERER CERTIFICATION

EXHIBIT E: NON-COLLUSIVE BIDDING CERTIFICATION

EXHIBIT F : DISCLOSURE OF PRIOR NON-RESPONSIBILITY DETERMINATION

EXHIBIT G: IRAN ENERGY SECTOR DIVESTMENT COMPLIANCE

EXHIBIT H: CERTIFICATION REGARDING SEXUAL HARRASSMENT

EXHIBIT I: ENCOURAGING USE OF NYS BUSINESSES IN CONTRACT PERFORMANCE

EXHIBIT J: EO177 CERTIFICATION

EXHIBIT K: WORKERS COMPENSATION INSURANCE CERTIFICATION (3 PAGES)

Appendix A : NYS Clauses for Government Contracts

Appendix B: NYSDOT PRFAP Contract Agreement

PROPOSAL BID FORM (Page 1)

NAME OF VENDOR: _____

1. The Vendor hereby declares that it has carefully examined all Bidding and Contract Documents therein, has satisfied itself as to all conditions, and understands that in signing this Proposal, it waives all right to plead any misunderstanding regarding the same.
2. The Vendor further understands and agrees that it is to perform and complete all work in accordance with the Contract Documents and to accept in full compensation in the amount and rates listed in this document with no further compensation.
3. **BID CALCULATION: Please attach a comprehensive and clear description of your cost proposal that includes all fees for labor, materials, etc. Please separate concrete work and bumper installation work quotes on your attachment.**

a. **Total proposed amount (e.g., no additional expenses will be permitted).**

_____ \$ _____
 (In words) (In figures)

b. **Optional Bumpers Total Cost** _____ \$ _____
 (In words) (In figures)

c. **EXPECTED PROJECT COMPLETION DATE:** _____

4. By submission of this bid, each bidder and each person signing on behalf of any bidder certifies, and in the case of joint bid, each party thereto certifies as to its own organization, under penalty of perjury, that to the best of his or her knowledge and belief: (a) the prices in this bid have been arrived at independently without collusion, consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other bidder or with any competitor; (b) unless otherwise required by law, the prices have been quoted in this bid have not been knowingly disclosed by the bidder and will not knowingly be disclosed by the bidder prior to opening, directly or indirectly, to any other bidder or to any competitor; and (c) no attempt has been made or will be made by the bidder to induce any person, partnership or corporation to submit or not to submit a bid for the purpose of restricting competition.
5. The bidder agrees that if awarded the Contract, it will commence work upon receipt of the Notice to Proceed and that it will fully complete the work by the date stated or within the duration herein, as applicable.
6. The bidder acknowledges the receipt of the following addenda but agrees that it is bound by all addenda whether or not listed herein.

Addendum Number	Date	Addendum Number	Date
_____	____/____/____	_____	____/____/____
_____	____/____/____	_____	____/____/____
_____	____/____/____	_____	____/____/____

7. The bidder affirms that it understands and agrees to comply with the procedures of Albany Port District Commission relative to permissible contacts as required by Sections 139-j(3) and 139-j-(6)(b) of the State Finance Law.
8. The bidder certifies that all information provided or to be provided to Albany Port District Commission in connection with this procurement is, as required by Section 139-k of the State Finance Law, complete, true and accurate.

_____ Dated _____
 _____ (Legal name of person, partnership, joint venture, corporation, or LLC)
 (If corporation, affix corporate seal)

By _____ Title _____
 (Signature)

BID PROPOSAL FORM (PAGE 2)

Check: Is Firm NYS-Certified* MBE? Yes WBE? Yes SDVOB? Yes

Note: A copy of the current certification must be included in proposal packet.

Note: Please indicate whether you believe that any information supplied herein is confidential and should be exempt from disclosure under the Freedom of Information Law.

Yes No

If “yes”, you must identify the information you feel is confidential by placing an asterisk (*) in front of the appropriate number(s) and you are requested to attach an additional sheet(s) upon which the basis for such claim(s) is explained.

COMPANY NAME: _____

ADDRESS: _____

CITY, STATE, ZIP: _____

TELEPHONE NO.: _____ EMAIL: _____

DIRECT CONTACT REPRESENTATIVE TO ORDER: _____

SIGNATURE AND TITLE: _____ DATE: _____

Firm's Federal ID Number or Social Security Number as applicable: _____

Firm's NYS SFS Vendor Identification Number: _____

PLEASE UTILIZE THIS SECTION TO INDICATE ANY DEVIATIONS YOU MAY HAVE FROM THE RFP SPECIFICATIONS:

EXHIBIT A : BIDDER QUESTIONNAIRE

1. Are you a New York State resident business?	Yes	N
2. Total number of people employed by your firm?		
3. Total number of people employed by your firm in New York State?		
4. Is your company independently owned and operated?	Yes	No
5. Is your firm at least 51% owned and controlled by women, or 51% owned and controlled by minority group members, i.e., Black, Hispanic, Asian, Pacific Islander, American Indian, and Alaskan Native? If yes, _____ Minority Owned _____ Women Owned If yes, have you been certified or registered? _____ Yes _____ No If yes, List certificate or registration authority:	Yes	No
6. Within the past five years has your firm, any affiliate, any predecessor company or entity, owner, director, officer, partner, or proprietor been the subject of:	(Circle any that apply. If "Yes", describe using additional pages.)	
a. An indictment, judgment, conviction, or a grant of immunity, including pending actions, for any business- related conduct constituting a crime under local, state, or federal law?	Yes	No
b. A federal, state, or local government suspension or debarment, rejection of any bid or disapproval of any bid or disapproval of any proposed subcontract, including pending actions, for lack of responsibility, denial, or revocation, of pre-qualification or a voluntary exclusion agreement?	Yes	No
c. Any federal or state determination of a violation of any public works law or regulation, or labor law or regulation, or any OSHA violation deemed "serious or willful"?	Yes	No
d. A consent order with NYS Department of Environmental Conservation, or a federal or state enforcement determination involving a violation of federal or state environmental laws?	Yes	No
7. Is your firm owned by a service-disabled veteran? If yes, have you been certified or registered? If yes, List certificate or registration authority: _____	Yes	No
	Yes	No

BIDDERS SIGNATURE _____
Print Name _____
Title _____
Date _____
Address _____
Federal ID # _____
Telephone # _____

EXHIBIT B:

CORPORATE, PARTNERSHIP OR INDIVIDUAL ACKNOWLEDGMENT

STATE OF _____)

) SS;

COUNTY OF _____)

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

(Check One)

(If an individual): ___he executed the foregoing instrument in His/her name and on his/her behalf.

(If a corporation): ___he is the _____ of _____, the corporation described in said instrument; that, by authority of the Board of Directors of said corporation, ___he is authorized to execute the foregoing instrument on behalf of the corporation for purpose set forth therein; and that, pursuant to that authority, ___he executed the foregoing instrument in the name of and on behalf of said corporation as the act and deed of said corporation.

(If a partnership): ___he is the _____ of _____, the corporation described in said instrument; that, by the terms of said partnership, ___he is authorized to execute the foregoing instrument on behalf of the partnership for the purpose set forth therein; and that, pursuant to that authority, ___he executed the foregoing instrument in the name and on behalf of said partnership as the act and deed of said partnership.

Notary Public

Exhibit C

Offeror affirms that it understands and agrees to comply with the procedures of the APDC relative to permissible Contacts as required by State Finance Law §139-j (3) and §139-j(6)(b).

By: _____

Date: _____

Name: _____

Title: _____

Offeror/Bidder Name: _____

Offeror/Bidder Address: _____

Exhibit D

Offeror Certification:

I certify that all information provided to the APDC with respect to State Finance Law §139-k is complete, true, and accurate.

By: _____ Date: _____

Name: _____

Title: _____

Offeror/Bidder Name: _____

Offeror/Bidder Address: _____

Exhibit E

NON-COLLUSIVE BIDDING CERTIFICATION

(Reference: Public Authorities Law Section 2878)

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

1. The prices and terms in this bid have been arrived at independently without collusion, consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other bidder or with any competitor;
2. Unless otherwise required by law, the price and term which have been quoted in this bid have not been knowingly disclosed by the bidder and will not knowingly be disclosed by the bidder prior to opening, directly, or indirectly, to any other bidder or to any competitor; and
3. No attempt has been made or will be made by the bidder to induce any other person, partnership, or corporation to submit or not submit a bid for the purpose of restricting competition.

Signature: _____ Date: _____

Title: _____

NAME OF BIDDER: _____

ADDRESS OF BIDDER: Street Address _____

City: _____ State: _____ Zip Code: _____

EXHIBIT F:**Albany Port District Commission****106 Smith Boulevard • Albany, New York 12202****Offeror Disclosure of Prior Non-Responsibility Determinations**

Name of Individual or Entity Seeking to Enter into the Procurement Contract: _____

Address: _____

Name and Title of Person Submitting this Form: _____

Project Number: _____ Date: _____

1. Has any Governmental Entity made a finding of non-responsibility regarding the individual or entity seeking to enter into the Procurement Contract in the previous four years? No Yes

If yes, please answer the next questions:

2. Was the basis for the finding of non-responsibility due to a violation of State Finance Law Section 139-j: No Yes3. Was the basis for the finding of non-responsibility due to the intentional provision of false or incomplete information to a Governmental Entity? No Yes

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

Governmental Entity: _____ Date of Finding of Non-

Responsibility: _____

Basis of Finding of Non-Responsibility: _____

(Add additional pages as necessary)

5. Has any Governmental Entity or other governmental agency terminated or withheld a Procurement Contract with the above-named individual or entity due to the intentional provision of false or incomplete information?

 No Yes

6. If yes, please provide details below.

Governmental Entity: _____

Date of Termination or Withholding of Contract: _____

Basis of Termination or Withholding: _____

(Add additional pages as necessary)

Offeror certifies that all information provided to Albany Port District Commission with respect to State Finance Law Section 139-k is complete, true and accurate. Submit form with original signature with Proposal.

By Signature: _____

Date: _____

EXHIBIT G:

**Albany Port District Commission
106 Smith Boulevard • Albany, New York 12202**

IRAN ENERGY SECTOR DIVESTMENT COMPLIANCE

Printed Name of Entity Seeking to Enter into the Contract: _____

Address: _____

Printed Name and Title of Person Executing Certification: _____

Project Number: _____

Pursuant to New York State Finance Law §165-a, Iran Divestment Act of 2012 (Act), the Office of General Services is required to post on its web site a list of persons who have been determined to engage in investment activities in Iran (“prohibited entities list”), as defined by the Act. New York State Public Authorities Law § 2879-c, with certain exceptions, prohibits Albany Port District Commission from entering into or awarding a Contract with persons identified on the prohibited entities list.

CERTIFICATION:

By submission of this bid or proposal, each person (as defined in paragraph (e) of subdivision one of section one hundred sixty five-a of the state finance law) and each person signing on behalf of any other party certifies, and in the case of a joint bid or proposal or partnership each party thereto certifies as to its own organization, under penalty of perjury, that to the best of its knowledge and belief that each person is not on the list created pursuant to paragraph (b) of subdivision 3 of section 165-a of the State finance law.

STATE OF _____)
)ss.:
 COUNTY OF _____)

The undersigned, being duly sworn, says (a) I am duly authorized to execute this Certification and (b) I hereby certify, under penalty of perjury, that the forgoing Certification is in all respects true and accurate.

Signature of Person Executing Certification: _____

Subscribed and sworn to before me this _____ day of _____, 20____.

Notary Public

Submit form with original signatures

EXHIBIT H:

**Albany Port District Commission
106 Smith Boulevard • Albany, New York 12202**

Certification Regarding Sexual Harassment Prevention Policies Pursuant to State Finance Law §139-1

By submission of this proposal, each bidder and each person signing on behalf of any bidder certifies, and in the case of a joint proposal each party thereto certifies as to its own organization, under penalty of perjury, that the bidder has and has implemented a written policy addressing sexual harassment prevention in the workplace and provides annual sexual harassment prevention training to all of its employees. Such policy shall, at a minimum, meet the requirements of section two hundred one-g of the labor law.

I, _____, hereby affirm, under penalty of perjury, that

Printed Name of Person Executing Certification

I am _____ of the above-named bidder, that I am

Printed Title of Person Executing Certification

authorized to make this certification on behalf of such bidder, and I further certify that this certification is true, accurate and complete to the best of my knowledge and belief.

The undersigned, being duly sworn, says (a) I am duly authorized to execute this Certification and (b) I hereby certify, under penalty of perjury, that the forgoing Certification is in all respects true and accurate.

signature

STATE OF _____)
) ss.:
COUNTY OF _____)

On this _____ day of _____, 20____, before me personally came

_____, to me known and known to me to be the person(s) described in and who executed the foregoing instrument and acknowledged that he/she executed the same.

Notary Public

Submit form with original signatures

EXHIBIT I:**ENCOURAGING USE OF NEW YORK STATE BUSINESSES IN CONTRACT PERFORMANCE**

New York State businesses have a substantial presence in State contracts and strongly contribute to the economies of the state and the nation. In recognition of their economic activity and leadership in doing business in New York State, bidders/proposers for this contract for commodities, services or technology are strongly encouraged and expected to consider New York State businesses in the fulfillment of the requirements of the contract. Such partnering may be as subcontractors, suppliers, protégés or other supporting roles.

Bidders/proposers need to be aware that all authorized users of this contract will be strongly encouraged, to the maximum extent practical and consistent with legal requirements, to use responsible and responsive New York State businesses in purchasing commodities that are of equal quality and functionality and in utilizing services and technology. Furthermore, bidders/proposers are reminded that they must continue to utilize small, minority and women-owned businesses, consistent with current State law.

Utilizing New York State 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 vendor and its New York State business partners. New York State businesses will promote the vendor's optimal performance under the contract, thereby fully benefiting the 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 vendors. The State therefore expects bidders/proposers to provide maximum assistance to New York businesses in their use of the contract. The potential participation by all kinds of New York businesses will deliver great value to the State and its taxpayers.

Bidders/proposers can demonstrate their commitment to the use of New York State businesses by responding to the question below:

Will New York State Businesses be used in the performance of this contract? Yes No

Project Number: _____

If yes, identify New York State Business(es) that will be used; (list identifying information below).

(Attach additional identifying information with the bid as required)

By: _____ Date: _____

Signature

Print Name and Title: _____

Vendor Name: _____

Vendor Address: _____

EXHIBIT J:**Albany Port District Commission****H. Carl McCall SUNY Building 353 Broadway • Albany, New York 12246****EO 177 Certification**

The New York State Human Rights Law, Article 15 of the Executive Law, prohibits discrimination and harassment based on age, race, creed, color, national origin, sex, pregnancy or pregnancy-related conditions, sexual orientation, gender identity, disability, marital status, familial status, domestic violence victim status, prior arrest or conviction record, military status or predisposing genetic characteristics.

The Human Rights Law may also require reasonable accommodation for persons with disabilities and pregnancy-related conditions. A reasonable accommodation is an adjustment to a job or work environment that enables a person with a disability to perform the essential functions of a job in a reasonable manner. The Human Rights Law may also require reasonable accommodation in employment on the basis of Sabbath observance or religious practices.

Generally, the Human Rights Law applies to:

- all employers of four or more people, employment agencies, labor organizations and apprenticeship training programs in all instances of discrimination or harassment;
- employers with fewer than four employees in all cases involving sexual harassment; and,
- any employer of domestic workers in cases involving sexual harassment or harassment based on gender, race, religion or national origin.

In accordance with Executive Order No. 177, the Bidder hereby certifies that it does not have institutional policies or practices that fail to address the harassment and discrimination of individuals on the basis of their age, race, creed, color, national origin, sex, sexual orientation, gender identity, disability, marital status, military status, or other protected status under the Human Rights Law.

Executive Order No. 177 and this certification do not affect institutional policies or practices that are protected by existing law, including but not limited to the First Amendment of the United States Constitution, Article 1, Section 3 of the New York State Constitution, and Section 296(11) of the New York State Human Rights Law.

Vendor Name: _____

By: _____ Date: _____

Signature

Print Name and Title: _____

EXHIBIT K:

State of New York

WORKERS' COMPENSATION BOARD**THIS AGENCY EMPLOYS AND SERVES PEOPLE WITH DISABILITIES WITHOUT DISCRIMINATION.****ROBERT R. SNASHAIL CHAIRMAN**

Dear Sir/Madam:

The Workers' Compensation Law requires that a New York State or municipal agency, department, board, commission, or office issues any permit or license, the applicant must submit, to such agency or department, proof that he or she has obtained the required workers' compensation and disability benefits coverage, or that he or she is not required to provide coverage under these Laws. (See attached copies of Section 57 of the Workers' Compensation Law and Section 220, subd. 8 of the Disability Benefits Law.) These requirements also apply to the renewal of an application for a permit or license, and any and all work covered by the permit or license, whether or not a governmental agency is involved.

In addition, effective April 7, 1993, Chapter 213 amended the above Laws to require that before a New York State or municipal agency, department, board, commission, or office enters into any contract, the contractor must also submit proof that he or she has obtained the required workers' compensation and disability benefits coverage, or that he or she is not required to provide coverage. These requirements also apply to the renewal of such contracts.

I would appreciate your notifying the permit-issuing and contract-making agencies or departments within your jurisdiction of these requirements so that they may be able to comply with the Law. State Agencies are specifically requested to notify each department or group within their agency, which issues licenses or permits or makes contracts, of the Law's requirements.

Enclosed are samples of Forms C-105.2 and DB-120.1 (Certificates of Insurance), and Form SI-12 (Affidavit Certifying That Compensation has Been Secured), which are designed to provide necessary proof of coverage when completed by the insurance canter and/or the Workers' Compensation Board. Also enclosed is a sample of Form DB-155 (Compliance with DB Law), which may be submitted by self-insured employers under Disability Benefits Law as acceptable proof that disability benefits coverage has been obtained.

Please note that it is acceptable for employers insured by the State Insurance Fund to submit the Fund's computer-generated certificate of insurance as proof of coverage, Form U-26.3 (sample enclosed), in place of prescribed Form C-105.2.

Employers who are not required by Law to provide workers' compensation and/or disability benefits coverage must submit Form C-105.21 (Statement That Applicant Does Not Require W.C. or D.B. Coverage), which when completed by the Workers' Compensation Board is proof that the applicant is not required to carry either type of insurance.

Thank you for your assistance in the enforcement of the above. If you require additional information regarding this or any other workers' compensation or disability benefits matter, please feel free to contact Mr. Frank Rends, Director, WC Compliance, Workers' Compensation Board, 100 Broadway-Menands, Albany, New York 12241 [telephone number (518) 486-51171].

STATE OF NEW YORK
WORKERS COMPENSATION BOARD
APPLICATION FOR CERTIFICATE OF WORKERS' COMPENSATION INSURANCE

The undersigned Employer desires to obtain a Certificate of Workers' Compensation Insurance from the Insurance Carrier: _____

as satisfactory proof required under the provisions of Section 57 of the Workers' Compensation Law, to be filed with Name: _____
(Name of Bureau, Department, Corporation, Firm or Individual)

Address: _____

Locations of operations: _____

Date operations to begin: _____

Telephone No.: _____

Signature: _____

(Name & Title)

(Name of Employer)

(Date)

NOTE: This application must be signed by the Employer if an individual, or if a co-partnership by member of the co-partnership, or by an officer if a corporation.

CERTIFICATE OF WORKERS' COMPENSATION INSURANCE

This is to certify that _____
(Name of individual, partnership, or corporation)

is insured with _____
(Name of insurance provider)

under Policy No. _____ covering the
entire obligation of this employer for workers' compensation under the New York Workers' Compensation Law with
respect to the locations named in the foregoing application.

The policy term covers the period from _____

To _____. If said policy is changed or cancelled during its term in such manner as to
affect this Certificate, thirty (30) days written notice of such change or cancellation shall be provided to the Owner, and
ten (10) days written notice in the event of cancellation for non-payment of premiums.

Signature: _____

(Name, Title, Date)

Telephone No. _____

Title _____

THE WORKERS' COMPENSATION BOARD EMPLOYS AND SERVES PEOPLE WITH DISABILITIES WITHOUT
DISCRIMINATION

C-105.2(10-94)

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APPENDIX A

STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS

**PLEASE RETAIN THIS DOCUMENT
FOR FUTURE REFERENCE.**

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STANDARD CLAUSES FOR NYS CONTRACTS

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

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

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

3. COMPTROLLER’S APPROVAL. In accordance with Section 112 of the State Finance Law, if this contract exceeds \$50,000 (or \$75,000 for State University of New York or City University of New York contracts for goods, services, construction and printing, and \$150,000 for State University Health Care Facilities) or if this is an amendment for any amount to a contract which, as so amended, exceeds said statutory amount, or if, by this contract, the State agrees to give something other than money when the value or reasonably estimated value of such consideration exceeds \$25,000, it shall not be valid, effective or binding upon the State until it has been approved by the State Comptroller and filed in his office. Comptroller’s approval of contracts let by the Office of General Services, either for itself or its customer agencies by the Office of General Services Business Services Center, is required when such contracts exceed \$85,000. Comptroller’s approval of contracts established as centralized contracts through the Office of General Services is required when such contracts exceed \$125,000, and when a purchase order or other procurement transaction issued under such centralized contract exceeds \$200,000.

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

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

6. WAGE AND HOURS PROVISIONS. If this is a public work contract covered by Article 8 of the Labor Law or a building service contract covered by Article 9 thereof, neither Contractor’s employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said statutes, except as otherwise provided in the Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, Contractor and its subcontractors must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as determined by the State Labor Department in

accordance with the Labor Law. Additionally, effective April 28, 2008, if this is a public work contract covered by Article 8 of the Labor Law, the Contractor understands and agrees that the filing of payrolls in a manner consistent with Subdivision 3-a of Section 220 of the Labor Law shall be a condition precedent to payment by the State of any State approved sums due and owing for work done upon the project.

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

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

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

10. RECORDS. The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this contract (hereinafter, collectively, the "Records"). The Records

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

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

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

12. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN.

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

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

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

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

Contractor will include the provisions of "(a), (b) and (c)" above, in every subcontract over \$25,000.00 for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (the "Work") except where the Work is for the beneficial use of the Contractor. Section 312 does not

apply to: (i) work, goods or services unrelated to this contract; or (ii) employment outside New York State. The State shall consider compliance by a contractor or subcontractor with the requirements of any federal law concerning equal employment opportunity which effectuates the purpose of this clause. The contracting agency shall determine whether the imposition of the requirements of the provisions hereof duplicate or conflict with any such federal law and if such duplication or conflict exists, the contracting agency shall waive the applicability of Section 312 to the extent of such duplication or conflict. Contractor will comply with all duly promulgated and lawful rules and regulations of the Department of Economic Development's Division of Minority and Women's Business Development pertaining hereto.

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

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

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

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

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

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

law will be the responsibility of the contractor to establish to meet with the approval of the State.

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

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

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

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

NYS Department of Economic Development
Division for Small Business and Technology Development
625 Broadway
Albany, New York 12245
Telephone: 518-292-5100

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

NYS Department of Economic Development
Division of Minority and Women's Business Development
633 Third Avenue 33rd Floor
New York, NY 10017
646-846-7364
email: mwbebusinessdev@esd.ny.gov
<https://ny.newnycontracts.com/FrontEnd/searchcertifieddirectory.asp>

The Omnibus Procurement Act of 1992 (Chapter 844 of the Laws of 1992, codified in State Finance Law § 139-i and Public Authorities Law § 2879(3)(n)-(p)) requires that by signing this bid proposal or contract, as applicable, Contractors certify that whenever the total bid amount is greater than \$1 million:

(a) The Contractor has made reasonable efforts to encourage the participation of New York State Business Enterprises as suppliers and subcontractors, including certified minority- and women-owned business enterprises, on this project, and has retained the documentation of these efforts to be provided upon request to the State;

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

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

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

21. RECIPROCITY AND SANCTIONS PROVISIONS. Bidders are hereby notified that if their principal place of business is located in a country, nation, province, state or political subdivision that penalizes New York State vendors, and if the goods or services they offer will be substantially produced or performed outside New York State, the Omnibus Procurement Act 1994 and 2000 amendments (Chapter 684 and Chapter 383, respectively, codified in State Finance Law § 165(6) and Public Authorities Law § 2879(5)) require that they be denied contracts which they would otherwise obtain. NOTE: As of May 2023, the list of discriminatory jurisdictions subject to this provision includes the states of South Carolina, Alaska, West Virginia, Wyoming, Louisiana and Hawaii.

22. COMPLIANCE WITH BREACH NOTIFICATION AND DATA SECURITY LAWS. Contractor shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law §§ 899-aa and 899-bb and State Technology Law § 208).

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

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

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

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

26. IRAN DIVESTMENT ACT. By entering into this Agreement, Contractor certifies in accordance with State Finance Law § 165-a that it is not on the “Entities Determined to be Non-Responsive Bidders/Offerers pursuant to the New York State Iran Divestment Act of 2012” (“Prohibited Entities List”) posted at: <https://ogs.ny.gov/iran-divestment-act-2012>

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

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

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

27. ADMISSIBILITY OF REPRODUCTION OF CONTRACT. Notwithstanding the best evidence rule or any other legal principle or rule of evidence to the contrary, the Contractor acknowledges and agrees that it waives any and all objections to the admissibility into evidence at any court proceeding or to the use at any examination before trial of an electronic reproduction of this contract, in the form approved by the State Comptroller, if such approval was required, regardless of whether the original of said contract is in existence.

NEW YORK STATE DEPARTMENT OF TRANSPORTATION

GRANT AGREEMENT

ALBANY PORT DISTRICT COMMISSION

P. ALBANY MARITIME FREIGHT HANDLING EXP.

COMPTROLLER CONTRACT # DR38915

PROJECT IDENTIFICATION # 1936.01.301

This Agreement, by and between the People of the State of New York (hereinafter referred to as "STATE") acting by and through the Commissioner of the Department of Transportation (hereinafter referred to as "COMMISSIONER"), with offices at 50 Wolf Road, Albany, New York 12232, and the Albany Port District Commission, with offices at 106 Smith Boulevard, Albany, New York 12202, (hereinafter referred to as the "GRANTEE") provides for the design, construction, reconstruction, improvement or rehabilitation of rail facilities as is more fully described in Appendix I of this Agreement.

WITNESSETH

WHEREAS, the STATE and the GRANTEE wish to provide for the preservation and improvement of the Project Facilities so as to allow for the safe and efficient movement of rail and vehicular traffic; and,

WHEREAS, Section 14 of the Transportation Law authorizes the COMMISSIONER to enter into contracts for the purpose of maintaining and improving rail transportation service; and,

WHEREAS, the total cost for this project is Eleven Million One Hundred Seventy Thousand dollars (\$11,170,000.00); and,

WHEREAS, Rail Preservation Purpose funds have been appropriated to the Department of Transportation to provide assistance to Railroads for the payment of the STATE's share of a rail project to be undertaken in accordance with the provisions of the aforesaid Section 14 of the Transportation Law; and,

WHEREAS, the Albany Port District Commission agrees to provide at least Six Million Three Hundred Seventy Thousand dollars (\$6,370,000.00) in funding or a pro rata share of 57% of the total funding for this project; and,

WHEREAS, it has been determined to be in the best interest of the public to make Four Million Eight Hundred Thousand dollars (\$4,800,000.00) available to the Albany Port District Commission for those capital improvements used in connection herewith.

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NOW THEREFORE, the parties hereto in consideration of the mutual promises, conditions, terms and obligations herein set forth, agree and covenant as follows:

ARTICLE ONE: DEFINITIONS

What is intended by the words and expressions defined below, shall be construed to have these meanings except where it is clear from the context that another meaning is intended.

"Agreement" means this document (with appendices).

"STATE" means the People of the State of New York acting by and through the Commissioner of the Department of Transportation.

"COMMISSIONER" means the Commissioner of the New York State Department of Transportation or his or her designated representative.

"GRANTEE" means the Albany Port District Commission receiving financial assistance under this Agreement.

"NYS DOT" means the New York State Department of Transportation.

"Project or Approved Project" means the design, construction, reconstruction, establishment, improvement, rehabilitation or modernization of rail facilities and other capital improvements conducted pursuant to this Agreement.

"Project Costs" means those costs as defined and contemplated in Section 2.6 for accomplishing the work set forth in Appendix I of this Agreement and computed in accordance with 23 CFR, Part 140, Subpart I, and amendments thereto.

"Project Facilities" means those facilities being constructed on underlying property excluding the underlying property, together with all materials, equipment, facilities or supplies acquired, constructed, reconstructed, established, improved or rehabilitated by or on behalf of the GRANTEE pursuant to the provisions of this Agreement to accomplish the work program set forth in the Work Schedule.

"Work Schedule" means a description of the project as described in Appendix I.

ARTICLE TWO: CAPITAL IMPROVEMENTS

Section 2.1 Description of Work

GRANTEE agrees to complete or cause to be completed the work described in the Work Schedule constituting Appendix I of this Agreement (hereinafter referred to as the "Work Schedule"); which

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Albany Port
District Commission

Port of Albany
Maritime Freight Handling Expansion

is attached hereto and made a part hereof, in accordance with said Work Schedule as may be modified or amended, and within the term specified in Section 4.1 or any extension thereof.

The term for accomplishing of work set forth in said Work Schedule may be extended or modified by mutual agreement between the parties in writing. No work to be financed by the STATE may begin without written approval from the COMMISSIONER.

Section 2.2 Manner of Performing Work

GRANTEE agrees to undertake or cause to be undertaken and to proceed expeditiously with the work to be accomplished as described in the Work Schedule, and to complete or cause to be completed said work by the date specified in Section 4.1. GRANTEE shall update said schedule upon written approval of the COMMISSIONER as necessary to assure that it accurately reflects the GRANTEE's timetable for completion.

Section 2.3 Approval of Subcontracts

Prior to advertising for any contract, subcontract, or service, GRANTEE shall obtain the prior written approval of the COMMISSIONER, which shall not be unreasonably withheld or delayed. GRANTEE shall not execute any contract, subcontract or amendment thereto, or obligate itself in any other manner with any third party relating to or with respect to the Project to be undertaken pursuant to this Agreement without the prior written approval of the COMMISSIONER, which shall not be unreasonably withheld or delayed. This Section 2.3 shall apply only to contracts, subcontracts, amendments and obligations pursuant to which GRANTEE incurs costs or expenses which are to be paid for in whole or in part by the STATE pursuant to this Agreement.

All agreements between the GRANTEE and subcontractors shall be by written contract, signed by individuals authorized to bind the parties. All such subcontracts shall contain provisions for specifying (1) that the work performed by the subcontractor must be in accordance with the terms of this Agreement, (2) that nothing contained in the subcontract shall impair the rights of the STATE under this Agreement, and (3) that nothing contained in the subcontract, nor under this Agreement shall be deemed to create any contractual relationship between the subcontractor and the STATE.

Section 2.4 Environmental Protection and Permits

GRANTEE agrees to obtain or cause to be obtained all approvals, permits and licenses necessary to progress the work described in Appendix I - Work Schedule, and also agrees to comply or cause to be complied with all applicable Federal, State and Local environmental laws and regulations or other laws, including New York Railroad Law, which in any way impacts work to be accomplished by the project.

Section 2.5 Inspection

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Albany Port
District Commission

Port of Albany
Maritime Freight Handling Expansion

During the term of this Agreement, the COMMISSIONER shall have the right to enter upon the Project Facilities for the purposes of inspecting and examining the condition of the Project Facilities and any activities conducted pursuant to this Agreement. Such right shall be exercised only at reasonable times and upon prior notice to GRANTEE.

Such inspection shall be conducted as outlined in the "Manual of Construction Supervision and Inspection Procedures for Work by Railroad Force Account" and/or the "Manual of Construction Supervision and Inspection Procedures for Railroad Let Contracts" as prepared by the Rail Division/Operations Bureau of the New York State Department of Transportation and dated January 1984, as amended. It is intended by the parties hereto that by reference to said manuals, it is agreed that the provisions thereof are deemed to be included herein and are accepted as binding upon the parties for purposes establishing construction inspection standards to the same extent and with the same force and effect as if said manuals had been set forth in and made a part of this Agreement.

Section 2.6 Reimbursement

STATE agrees to reimburse GRANTEE the pro rata share of 23.3% of the eligible Project Costs up to the amount identified in Appendix I-Work Schedule which GRANTEE incurs for the work performed or facilities provided as described in the attached Appendix I-Work Schedule. GRANTEE agrees to provide a pro rata share of \$6,370,000.00 of the eligible project costs as identified in Appendix I-Work Schedule. Project Costs in excess of STATE funds available for the work shall be the responsibility of GRANTEE. In no event shall the STATE be obligated to fund or reimburse any costs exceeding \$4,800,000.00. The STATE shall not be obligated to pay nor shall GRANTEE claim reimbursement for the use of facilities or equipment which have been acquired by GRANTEE in whole or in part with funds provided by STATE under this or any other agreement. GRANTEE shall provide its share of the cost of the project, if any.

Prior to start of construction, GRANTEE shall certify the source and availability of funds for Project Costs which are in excess of STATE funds being made available under this Agreement.

The GRANTEE shall submit to the STATE fair and reasonable charges, less the salvage value of materials recovered, as evidence by detailed invoices, for the cost of the work performed or facilities provided as described above, in accordance with the procedures acceptable to the COMMISSIONER and the State Comptroller. All costs charged to the project shall be properly supported by executed payrolls or abstracts thereof, time, material and accounts payable distribution records, invoices, contracts, vouchers and/or canceled checks evidencing in proper detail the nature and propriety of the charges and the payment of all liabilities by the GRANTEE. These documents shall be retained and maintained by the GRANTEE, as provided in Section 4.10 herein, so that they will be available for audit by authorized representatives of the COMMISSIONER and State Comptroller.

Monthly accounting, in accordance with approved certification of such costs incurred by GRANTEE including the last day of the previous month less the salvage value of materials recovered during that month, shall be submitted, provided the amount is \$1,000.00 or more and may be submitted for smaller amounts or lesser time-frames upon special request by the party originating the same and approval of COMMISSIONER.

In addition to other requirements of this agreement, the original expenditure must have been paid within the past 15 months in order to comply with Federal Tax Law (26 CFR 1.150-2 (d)(2)(i)) which governs fund disbursements from the issuance of tax-exempt bonds. Hence, expenditures paid greater than 15 months prior to the reimbursement request are ineligible for reimbursement.

The STATE shall reimburse the GRANTEE in the amount of the approved Project Costs so submitted as to the work performed. In no event shall the cost to STATE of said work exceed the amount specified in the Work Schedule, except as such cost may hereinafter be increased pursuant to a written amendment to this Agreement by the parties hereto. All costs so submitted by GRANTEE shall be subject to approval by COMMISSIONER, and to audit by the COMMISSIONER and the State Comptroller.

Upon the completion of all said work by GRANTEE pursuant to this Agreement, a final statement of costs shall be submitted to the STATE within one hundred eighty (180) days. Upon receipt of the final statement of costs by the COMMISSIONER, the COMMISSIONER will conduct an audit of the GRANTEE project account records within one hundred eighty (180) days to determine the resources applied or used by GRANTEE in fulfilling the terms of this Agreement. Upon the completion of said audit and concurrence by GRANTEE, the final reimbursement payment will be made to GRANTEE.

Section 2.7 Electronic Contract Payments

GRANTEE shall provide complete and accurate supporting documentation of eligible expenditures as required by this contract, the COMMISSIONER and the State Comptroller. Following COMMISSIONER approval of such supporting documentation, payment for invoices submitted by the GRANTEE shall only be rendered electronically unless payment by paper check is expressly authorized by the COMMISSIONER, in the COMMISSIONER's sole discretion, due to extenuating circumstances. Such electronic payment shall be made in accordance with ordinary State procedures and practices. The GRANTEE shall comply with the State Comptroller's procedures for all Federal and applicable State Aid to authorize electronic payments. Authorization forms are available at the State Comptroller's website at www.osc.state.ny.us/epay/index.htm, by email at epayments@osc.state.ny.us, or by telephone at 518-474-4044. The GRANTEE herein acknowledges that it will not receive payment on any invoices submitted under this Contract agreement if it does not comply with the applicable State Comptroller's electronic payment procedures, except where the COMMISSIONER has expressly authorized payment by paper check as set forth above.

Section 2.8 State Recovery of Ineligible Reimbursements.

In the event that any payments are made by the STATE to the GRANTEE for costs incurred by GRANTEE, which are subsequently determined to be ineligible for reimbursement under this Agreement, STATE may retain an amount equal to any such excess payments from any monies then or which may become due and owing to GRANTEE under the Agreement, or GRANTEE shall repay such amount to STATE within forty-five (45) days from the date GRANTEE receives notice of such determination of ineligibility or the date on which a final decision is made in any appeal or review of such determination authorized by applicable law and made by GRANTEE, whichever is later.

Section 2.9 Failure to Diligently Progress Project or Loss of State Participation.

In the event the COMMISSIONER determines that the GRANTEE has failed to diligently progress the project, or in the event the GRANTEE withdraws its approval of the project, or the GRANTEE suspends or delays work on the Project such that it can not be reasonably completed, or takes other action that results in the loss of state participation in the costs incurred pursuant to this agreement, the GRANTEE shall refund to the STATE all reimbursements received from or through the STATE. The STATE may offset any other STATE aid due to the GRANTEE by such amount and apply such offset to such repayment obligation of the GRANTEE.

Section 2.10 Civil Rights Requirements

The provisions of New York State Executive Law Article 15-A, Article 17-B and Parts 140-145 of Title 5 of the New York Codes, Rules and Regulations ("NYCRR") are applicable to all State contracts. The GRANTEE shall comply with these laws, rules and regulations and the M/WBE and SDVOB Program requirements.

a) Equal Employment Opportunity (EEO) Policy Statement. Pursuant to 5 NYCRR §143.2, a GRANTEE shall adopt an EEO policy if one is not previously adopted, as provided in Appendix B, and submit to NYSDOT a signed copy of Appendix B.

b) Minority and Women-owned Business Enterprise (M/WBE) and Service-Disabled Veteran Owned Business (SDVOB) Goals. The GRANTEE must comply with all M/WBE requirements and goals stated within the provisions of Appendix B, titled, "Minority and Women-owned Business Enterprises – Service-Disabled Veteran Owned Business – Equal Employment Opportunity Policy Statement". If any part of the GRANTEE's grant is effectuated with either the GRANTEE's employed workforce or through pre-existing competitively procured contracts, then the GRANTEE shall not apply goals to that portion of the work. In either case, the GRANTEE is encouraged to maximize M/WBE and SDVOB participation to the maximum extent practicable.

c) M/WBE and SDVOB Guidance. Refer to the New York State Department of Transportation website and Appendix B for guidance related to M/WBE and SDVOB goals at: <https://www.dot.ny.gov/main/business-center/civil-rights/>. Assigned M/WBE and SDVOB goals must be included in the GRANTEE's proposed contract documents when submitted for NYSDOT approval prior to project advertisement. Any requests for a reduction or waiver of the goals must be submitted at that time so that the correct goals are included in the project advertisement. For purposes of providing meaningful participation by M/WBE and SDVOB firms on the Agreement and achieving the M/WBE and SDVOB Contract Goals established in Section 2.10.a hereof, the GRANTEE should reference the directory of M/WBE firms at the following internet address: <https://ny.newnycor.com> and the directory of SDVOB firms at the following internet address: <https://online.ogs.ny.gov/SDVOB/search>.

d) Good Faith Efforts. If a GRANTEE fails to meet the M/WBE or SDVOB requirements set forth in Appendix B, they must demonstrate Good Faith Efforts pursuant to 5 NYCRR §142.8.

e) M/WBE and SDVOB Compliance Reports. The GRANTEE shall require their consultants and contractors to submit electronic, monthly M/WBE and SDVOB compliance reports via NYSDOT's Standard Civil Rights Reporting Software (EBO), on or before the 15th day of the immediately preceding month. The GRANTEE must apply for access to EBO at the following website: <https://www.dot.ny.gov/dotapp/ebo>.

f) Failure to Comply. If the GRANTEE fails to monitor and administer contracts in accordance with State requirements, the GRANTEE will not be reimbursed for associated activities within the affected contracts. The GRANTEE must ensure that any contract it awards under this Agreement has a Minority and Women-owned Business Enterprise (M/WBE) and a Service-Disabled Veteran Owned Business (SDVOB) Utilization Plan and complies with such plans. If, without prior written approval by NYSDOT, the GRANTEE's contractors and subcontractors fail to complete work for the project as proposed in the M/WBE and SDVOB Schedule of Utilization, NYSDOT at its discretion may (1) cancel, terminate or suspend this agreement or such portion of this agreement, or (2) assess liquidated damages in an amount of up to 20% of the portion of the GRANTEE's contracts and subcontracts funded in whole or in part by this agreement, to which contract goals are established by NYSDOT.

k) Equal Employment Opportunity (EEO) Requirements. EEO goals (as provided in "CAPITAL PROJECT GUIDELINES"), EEO Policy Statement (as provided in "Appendix B – M/WBE-SDVOB and EEO Policy Statements") and specifications (as provided in NYSDOT's Standard Specifications §102-11 Equal Employment Opportunity Requirements) must be included in the contract documents and project advertisement.

<https://www.dot.ny.gov/main/business-center/engineering/specifications/updated-standard-specifications-us>

l) EEO Monitoring and Reporting. EEO participation shall be monitored by the GRANTEE as the project progresses. EEO participation shall be reported by the contractor through NYSDOT's civil rights reporting software, EBO.

Section 2.11 Quarterly Project Reports

The GRANTEE shall submit, to the designated STATE representative, Quarterly Project Reports (Quarterly Reports), based on the quarters of the Federal fiscal year (October 1 through September 30), due ten (10) days after the end of each quarter (January 10, April 10, July 10 and October 10 of each year). The first Quarterly Report will cover the time period from when the fully executed agreement is received by the GRANTEE to the end of the specific quarter as described above.

The Quarterly Reports may be submitted hardcopy or (preferably) electronically. The Quarterly Reports should be in the format of Appendix III. Electronic copies of the Quarterly Reports shall be obtained by contacting the STATE designee noted in Section 4.13 "Notices" of this Agreement.

The GRANTEE agrees to include in the Quarterly Reports, submitted in accordance with this Agreement, brief information on the following areas:

- A comparison of actual accomplishments with planned outcomes;
- Reason(s), if any, for delays;
- Planned outcomes for the upcoming quarter; and
- Any information relative or pertinent to project progress, cost and scheduled completion

The GRANTEE agrees that it will notify STATE of problems, delays or adverse conditions which materially impair the ability to meet the scheduled completion date as specified in Appendix I - Work Schedule.

The Quarterly Reports format and content requirements may be subject to change during the progress of the project. Quarterly Project Reports are considered project status reports and will address the progress made in achieving the work as depicted in Appendix I - Work Schedule.

Section 2.12 Federally Funded Grants

The funds provided to the GRANTEE through this Agreement are New York State funds. The GRANTEE may utilize federal funding for any GRANTEE share identified herein, subject to prior STATE approval and subject to the following conditions:

- i. The terms and conditions of this agreement that conflict with federal rules, federal regulations, or federal program specific requirements shall not apply.
- ii. The GRANTEE shall comply with all applicable federal rules, regulations and program specific requirements.

- ii. The GRANTEE shall submit to the COMMISSIONER a copy of the grant or other instrument by which the federal funds are provided to the GRANTEE.

ARTICLE THREE: OPERATION, MAINTENANCE AND ABANDONMENT

Section 3.1 Title to Materials

The materials installed at STATE expense pursuant to this Agreement, excluding the underlying land, shall be the property of the STATE and title thereto shall vest in the STATE at the time of acquisition and shall remain vested in the STATE for the operation and maintenance term of this Agreement specified in Section 4.1 or any extension thereof. Upon completion of the operation and maintenance term of this Agreement, title shall be vested in the GRANTEE without need of any execution and delivery of deeds, bill of sale or other title document.

Section 3.2 Use and Disposition of Project Facilities

Upon completion and acceptance of the Project Facilities by GRANTEE, GRANTEE shall certify in writing to the COMMISSIONER that the Project Facilities have been completed and accepted in accordance with the WORK SCHEDULE.

GRANTEE shall provide rail service on or in connection with the Project Facilities in compliance with all applicable Federal, State and Local laws, ordinances and regulations in any way relating to the use, rail service or maintenance thereof.

GRANTEE agrees that, during the term of this Agreement or in any event if funding of the STATE's share is from the proceeds of bonds or other obligations issued by the STATE or any of its public benefit corporations, such Project Facilities shall not be sold, rendered unusable, relinquished, or disposed of by GRANTEE without the express written consent of the COMMISSIONER having first been obtained, which shall not be unreasonably withheld or delayed.

Section 3.3 Maintenance

GRANTEE agrees to maintain, or arrange to have maintained, at no expense to STATE, the Project Facilities as well as ancillary facilities, in accordance with usage, for the operation and maintenance term specified in Section 4.1 hereof.

Section 3.4 Abandonment

GRANTEE shall have the right to abandon part or all of the Project Facilities, or to discontinue or curtail service thereover, provided that:

- a Said abandonment, discontinuance or curtailment of service has been authorized by the federal Surface Transportation Board or any body having jurisdiction thereof;

- b. At the time of abandonment, discontinuance or curtailment of service, the Project Facilities shall comply with all provisions of said Agreement; and
- c. The COMMISSIONER has the right to oppose any abandonment or discontinuance action before the Surface Transportation Board.

Should GRANTEE exercise this right to abandon part or all of the Project Facilities or permanently discontinue use thereof within the term of this Agreement, GRANTEE shall reimburse STATE for Project Costs previously reimbursed by STATE under this Agreement based on straight line depreciation of Project Costs reimbursed by STATE calculated over the maintenance term of this agreement as set forth in Section 4.1.

ARTICLE FOUR: GENERAL PROVISIONS

Section 4.1 Term of Agreement

The term of this Agreement shall begin on April 20, 2022; with work to be completed by December 31, 2026, unless otherwise amended; and the operation and maintenance term shall extend until 10 years from the date of completion of work as accepted by STATE.

Section 4.2 Required Approvals

In accordance with Section 112 of the State Finance Law, this Agreement shall not be valid, effective or binding upon the STATE until it has been approved by, and filed with the New York Attorney General Contract Approval Unit (AG) and the Office of the State Comptroller (OSC).

Section 4.3 Liability and Indemnification

GRANTEE hereby agrees to indemnify and hold harmless the STATE, the Department of Transportation and their respective agents and employees from any and all liability for injury to or death of any person or persons and for loss of, damage to, or destruction of any property or equipment which arises from activities conducted by or on behalf of the GRANTEE pursuant to this Agreement, including all related costs and counsel fees, except when attributable to the fault or negligence of the STATE, the Department of Transportation, its respective agents and employees other than GRANTEE.

GRANTEE agrees to require its contractor(s) to procure and maintain until final acceptance of the Project by the STATE, insurance of the kinds and in the amounts hereinafter provided in insurance companies authorized to do business in the State of New York, covering all activities under this Agreement whether performed by the GRANTEE, its contractor(s) or subcontractor(s). GRANTEE shall furnish to the STATE a certificate(s), in a form satisfactory to the STATE, showing compliance with this Article, which certificate(s), shall provide that the policies shall not be

changed or canceled until thirty (30) days written notice has been given to the STATE. The kinds and amounts of insurance required are as follows:

In addition to any other forms of insurance or bonds required under the terms of the contract and specifications, the GRANTEE's Contractor will be required to carry insurance of the following kinds and amounts:

a. Public Liability Insurance

With respect to the operations performed, regular Contractor's Public Liability Insurance is provided for a limit of not less than \$2,000,000. Single Limit, Bodily Injury and/or Property Damage combined, for damages arising out of bodily injuries to or death of all persons in any one occurrence and for damage to or destruction of property, including the loss of use thereof, in any one occurrence.

b. Protective Public Liability Insurance

With respect to the operations performed, subcontractors provide regular Contractor's Protective Public Liability Insurance for a limit of not less than \$2,000,000. Single Limit, Bodily Injury and/or Property Damage combined, for damages arising out of bodily injuries to or death of all persons in any one occurrence and for damage to or destruction of property, including the loss of use thereof, in any one occurrence.

c. Motor Vehicle Liability Insurance

With respect to any motor vehicles which may be used in connection with the work to be performed, the Contractor shall maintain a policy(s) as required by the Motor Vehicle Laws of the State of New York to bear license plates.

d. Railroad Protective Public Liability Insurance

With respect to the operations the Contractor or any of the Contractor's subcontractors perform, Contractor shall provide Railroad Protective Public Liability Insurance (AAR-AASHTO Form) in the name of all railroad companies operating at the location of the Project Facilities providing for a limit of not less than \$2,000,000. Single Limit, Bodily Injury and/or Property Damage combined, for damages arising out of bodily injuries to or death of all persons in any one occurrence and for damage to or destruction of property, including the loss of use thereof, in any one occurrence. Such insurance shall be furnished with an aggregate of not less than \$6,000,000 for damages as a result of more than one occurrence.

e. Force Account Insurance

The GRANTEE shall carry Force Account insurance covering bodily injury, legal liability, liability assumed under this Agreement and property damages resulting from any acts, errors or omissions for the work performed by GRANTEE's employees in connection with this Agreement. This policy shall provide limits not less than Two Million (\$2,000,000) nor more than Six Million Dollars (\$6,000,000) as determined by GRANTEE, the appropriate

cost of which shall be reimbursed under FHWA, 23 CFR Part 140, Subpart 1 (April 7, 1992) as amended. The GRANTEE retains the right to self-insure any of its obligations under this provision.

The insurance hereinbefore specified shall be carried until all work required to be performed under the terms of the Agreement is satisfactorily completed and formally accepted. Failure to carry or keep such insurance in force until all work is satisfactorily completed shall constitute a violation of the Agreement.

Section 4.4 Assignment

GRANTEE shall not assign this Agreement or any interest herein without first obtaining COMMISSIONER'S written consent thereto, which consent shall not be unreasonably withheld or delayed.

Section 4.5 Non-Waiver

No covenant or condition of this Agreement can be waived except by the written consent of the parties hereto. Forbearance or indulgence by STATE in any regard whatsoever shall not constitute a waiver of any covenant or condition to be performed by GRANTEE as applicable, and until complete performance by the appropriate party of such covenant or condition, STATE shall be entitled to invoke any remedy available to it under this Agreement or by law or in equity despite such forbearance or indulgence.

Section 4.6 Entire Agreement

This instrument and the appendices identified herein constitute the entire agreement between STATE and GRANTEE and it shall not be amended, altered or changed except by a written agreement signed by all of the parties hereto.

Section 4.7 Force Majeure

The obligations of the parties hereunder shall be subject to force majeure (which shall include strikes, riots, floods, acts of God, and other causes or circumstances beyond the control of the party claiming such force majeure as an excuse for non-performance), but only as long as, and to the extent that, such force majeure shall prevent performance of such obligations.

Section 4.8 Successors and Assigns

All the covenants and obligations of the parties hereunder shall bind their successors and assigns, and any document assigning same will incorporate language whereby assignee will specifically accept and assume all such covenants and obligations.

Section 4.9 Interpretation

The Article and Section headings utilized in this Agreement are for convenience only. This Agreement shall be construed in accordance with and governed by the Laws of the State of New York. All appendices attached hereto are integral parts of this Agreement and the provisions set forth in the Appendices shall bind the parties hereto to the same extent as if such provisions had been set forth in their entirety in the main body of this Agreement. Nothing expressed or implied herein shall give or be construed to give to any person, firm or corporation other than STATE or GRANTEE any legal or equitable right, remedy or claim under or in respect to this Agreement. Neither this Agreement nor any of the terms hereof may be terminated, amended, supplemented, waived or modified orally, but only by an instrument in writing signed by COMMISSIONER and GRANTEE unless a provision hereof expressly permits any of the parties to effect termination, amendment, supplementation, waiver or modification hereunder, in which such action shall be taken in accordance with the terms of such provision.

Section 4.10 Records and Documents

GRANTEE shall maintain books, records and supporting documents in connection with the work to be accomplished pursuant to this Agreement. For a period of six (6) years from the date of submission of the final bill by GRANTEE or for the operation and maintenance term of the agreement as specified in Section 4.1, whichever is greater, the books, records, bills, vouchers, payrolls, invoices and other documents of every type and description pertaining to the work to be accomplished under this Agreement shall be available to COMMISSIONER or the State Comptroller, or their authorized representatives, for inspection and audit. All costs charged under this Agreement shall be supported by payrolls and time records, material consumption reports, business expense statements, paid invoices and contracts evidencing in detail the nature of the charges for which reimbursement is sought.

a. **Extended Records Retention Requirements.**

To ensure that NYSDOT meets certain requirements under the Code of Federal Regulations, Part 26, and to ensure that NYSDOT may authorize the use of funds for this project, notwithstanding any other provision of this Agreement to the contrary, the GRANTEE must retain the following documents in connection with the Project:

- i. Documents evidencing the specific assets financed with such proceeds, including but not limited to project costs, and documents evidencing the use and ownership of the property financed with proceeds of the bonds; and
- ii. Documents, if any, evidencing the sale or other disposition of the financed property.

The GRANTEE covenants to retain those records described above, which are used by the GRANTEE in connection with the administration of this Program, for thirty-six (36) years after the date of NYSDOT's final payment of the eligible project cost(s).

Failure to maintain such records in a manner that ensures complete access thereto, for the period described above, shall constitute a material breach of the contract and may, at the discretion of NYSDOT, result in loss of funds allocated, or the GRANTEE's repayment of funds distributed to the GRANTEE under this agreement.

Section 4.11 Termination or Suspension

The STATE shall have the absolute right to terminate this Agreement, and such action shall in no event be deemed a breach of contract:

- a. If a termination is brought about for the convenience of the STATE and not as a result of unsatisfactory performance on the part of GRANTEE, final payment shall be made based on the actual cost incurred by GRANTEE in accordance with the terms of this Agreement and as verified by audit. In determining the value of the work performed by GRANTEE prior to the termination, no consideration will be given to profit which GRANTEE might have made on the uncompleted portion of the work.
- b. If the termination is brought about as a result of unsatisfactory performance on the part of GRANTEE, the value of the work performed by GRANTEE, prior to termination shall be established by the percent of the amount of such work completed by GRANTEE and acceptable to the STATE, of the total amount of work contemplated by this Agreement.
- c. If, for any reason, the commencement, prosecution or timely completion of the Project is rendered improbable, infeasible, impossible or illegal, or if GRANTEE is determined by the STATE to be in default under its agreement, then the STATE may terminate the Project upon fifteen (15) days prior written notice to GRANTEE. GRANTEE shall have the opportunity to cure such default during this fifteen (15) day notice period.

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

Section 4.12 Severability

If any part of this Agreement is determined to be invalid, illegal or unenforceable, such determination shall not affect the validity, legality or enforceability of any other part of this Agreement and the remaining parts of this Agreement shall be enforced as if such invalid, illegal or unenforceable part were not contained herein.

Section 4.13 Notices

All notices permitted or required hereunder shall be in writing and shall be transmitted either:

- a. via certified or registered United States mail, return receipt requested, at the address here before identified;
- b. by facsimile transmission;
- c. by personal delivery;
- d. by expedited delivery service; or
- e. by e-mail.

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

COMMISSIONER Contact: Raymond Hessinger
50 Wolf Road
Albany, New York 12232-0001
Phone:[518] 457-8075
Fax: [518] 457-3138
Raymond.Hessinger@dot.ny.gov

GRANTEE Contact: Richard Hendrick
106 Smith Boulevard
Albany, New York 12202
Phone:518-463-8763
Fax:
rhendrick@portofalbany.us

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, upon receipt. The parties may, from time to time, specify any new or different address in the United States as their address for purpose of receiving notice under this Agreement by giving fifteen (15) days written notice to the other party sent in accordance herewith. The parties agree to mutually designate individuals as their respective representatives for the purposes of receiving notices under this Agreement. Additional individuals may be designated in writing by the parties for purposes of implementation and administration/billing, resolving issues and problems and/or for dispute resolution.

Section 4.14 Counterparts

This Agreement may be executed in any number of counterparts, each of which shall be original.

Section 4.15 Relationship to Parties

The relationship of the GRANTEE to the STATE is that of any independent contractor, and the GRANTEE, in accordance with its status as such contractor, covenants and agrees that it will conduct itself consistent with such status, that is will neither hold itself out as nor claim to be an officer or employee of the STATE by reason hereof, and that it will not by reason hereof, make any claim, demand or application to or for any right or privilege applicable to an officer or employee of the STATE, including, but not limited to worker's compensation coverage, retirement membership or credit.

Section 4.16 Documents Forming Agreement

This Agreement shall consist of this document and the following attachments:

- Appendix I, Work Schedule;
- Appendix II, Supplemental Title VI Provisions (Civil Rights Act);
- Appendix III, Quarterly Program Reporting Spreadsheet;
- Appendix A, Standard Clauses for all New York State Contracts
- Appendix B, MWBE-SDVOB and EEO Policy Statement
- Resolution - APDC

BT
MT

PIN: 1936.01.301
CONTRACT DR38915

**ALBANY PORT DISTRICT COMMISSION
SIGNATURE**

By: Richard J. Hendricks

Title: CEO

Dated: 6-10-22

Department Certification

"In addition to the acceptance of this contract, I also certify that original copies of this signature page will be attached to all other exact copies of this contract."

By: M. T. Q.

For the Commissioner

Dated: AUG 25 2022

State of New York

County of Albany

On this 10th day of June, 2022, before me personally came Richard J. Hendricks to me known to be the CEO of Albany Port District Commission, the entity described in and which executed the foregoing instrument: acknowledged to me that he executed the same, pursuant to authorization by Albany Port District Commission.

PATRICK K. JORDAN
Notary Public, State of New York
Qualified in Rensselaer County
No. 02J08140368
Commission Expires Jan. 30, 2024

Patrick K. Jordan
Notary Public

Dated: 6/10/22

ATTORNEY GENERAL'S SIGNATURE

Dated: _____

COMPTROLLER'S SIGNATURE

APPROVED
DEPT. OF AUDIT & CONTROL

Sep 09 2022
Paul A. Bachman

FOR THE STATE COMPTROLLER

PIN 1936.01.301

Albany Port
District Commission

Port of Albany
Maritime Freight Handling Expansion

APPENDIX I – WORK SCHEDULE

The Project will consist of the items of work set forth in this Work Schedule, and as more fully described in plans and estimates prepared by or on behalf of the GRANTEE as may be required. Should contract plans, specifications, and estimates be required, they shall be prepared by or on behalf of the GRANTEE and subject to STATE approval and shall be deemed to be included herein as part of the Work Schedule.

This project proposes to rehabilitate a current maritime shed to code and reconstruct the rail section that runs adjacent to it as well as to expand the Port of Albany's maritime Stevedore partner's cargo handling area by 26%. This will address the Port's need for increased storage and handling capacity.

Work items to include:

Description	Estimated Cost
Preliminary Design	\$570,000.00
Final Design	\$800,000.00
Construction	\$8,500,000.00
Administration	\$800,000.00
Other	\$500,000.00
GRANTEE SHARE	\$6,370,000.00
NYS SHARE	\$4,800,000.00
TOTAL PROJECT COST	\$11,170,000.00

Individual work elements may be adjusted within the total Agreement amount with prior written approval of the STATE.

The STATE's financial participation is limited to four million eight hundred thousand dollars (\$4,800,000.00) of the project costs. Any overage will be the responsibility of the GRANTEE.

All work identified in this Work Schedule shall be completed no later than 12/31/2026.

APPENDIX II: SUPPLEMENTAL TITLE VI PROVISIONS (CIVIL RIGHTS ACT)

To be included in all contracts

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

- (1) **Compliance with Regulations:** The contractor shall comply with the Regulation relative to nondiscrimination in Federally-assisted programs of the Department of Transportation of the United States, Title 49, Code of Federal Regulations, Part 21, and the Federal Highway Administration (hereinafter "FHWA") Title 23, Code of Federal Regulations, Part 200 as they may be amended from time to time, (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.
- (2) **Nondiscrimination:** The Contractor, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, color, or national origin, sex, age, and disability/handicap in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor shall not participate either directly or indirectly in the discrimination prohibited by 49 CFR, section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.
- (3) **Solicitations for Subcontractors, Including Procurements of Materials and Equipment:** In all solicitations either by competitive bidding or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the contractor of the contractor's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin, sex, age, and disability/handicap.
- (4) **Information and Reports:** The contractor shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by NYSDOT or the FHWA to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this information the contractor shall so certify to NYSDOT's Office of Civil Rights or FHWA, as appropriate, and shall set forth what efforts it has made to obtain the information.
- (5) **Sanctions for Noncompliance:** In the event of the contractor's noncompliance with the nondiscrimination provisions of this contract, NYSDOT shall impose such contract sanctions as it or the FHWA may determine to be appropriate, including, but not limited to:
 - (a.) withholding of payments to the contractor under the contract until the contractor complies, and/or
 - (b.) cancellation, termination or suspension of the contract, in whole or in part.
- (6) **Incorporation of Provisions:** The contractor shall include the provisions of paragraphs (1) through (6) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto.

The contractor shall take such action with respect to any subcontract or procurement as NYSDOT or the FHWA may direct as a means of enforcing such provisions including sanctions for non-compliance: Provided, however, that, in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the contractor may request NYSDOT to enter into such litigation to protect the interests of NYSDOT, and, in addition, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

PIN 1936.01.301

Albany Port
District Commission

Port of Albany
Maritime Freight Handling Expansion

APPENDIX III – QUARTERLY PROGRAM REPORTING SPREADSHEET

Grant Recipient	
Contract #	
Project Identification #	
Total Award Amount	
Reporting Period	

Table 1. Rate of Expenditure. Record all funds expended for each budget category.

	State Funds Expended this Reporting Period	Cost-Share Expended this Reporting Period	Cumulative State Funds Expended	Cumulative Cost-Share Expended
Personnel	\$ -	\$ -	\$ -	\$ -
Materials	\$ -	\$ -	\$ -	\$ -
Equipment	\$ -	\$ -	\$ -	\$ -
Contractual	\$ -	\$ -	\$ -	\$ -
Other	\$ -	\$ -	\$ -	\$ -
TOTALS	\$ -	\$ -	\$ -	\$ -

Table 2. Narrative Responses

Question	Answer
What actual accomplishments occurred during the reporting period?	
Provide a comparison of actual accomplishments with the anticipated outputs/outcomes and timelines/milestones specified in the project Work Plan.	
If anticipated outputs/outcomes and/or timelines/milestones are not met, why not? Did you encounter any problems during the reporting period which may interfere with meeting the project objectives? If no funds were expended during the Reporting Period, provide an explanation as to why.	
How do you propose to remedy any problems? Identify how and the date you will get back on course to meet the anticipated outputs/outcomes and/or timelines/milestones specified in the project work plan.	
If any cost-share or additional leveraged funds are reported for this Reporting Period in Table 1 above, identify the source of the funds.	
What project activities are planned for the next reporting period?	

APPENDIX B

MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES-SERVICE DISABLED VETERAN OWNED BUSINESSES – EQUAL EMPLOYMENT OPPORTUNITY POLICY STATEMENT

M/WBE, SDVOB, AND EEO POLICY STATEMENT

I, Richard J Hendrick, the representative for GRANTEE adopted, or agree to adopt, the following policies with respect to the project being developed or services rendered at

(Insert project/service description)

M/WBE/SDVOB

- (1) Actively and affirmatively solicit bids for contracts and subcontracts from qualified State certified MBEs, WBEs, and SDVOBs, including solicitations to M/WBE and SDVOB contractor associations.
- (2) Obtain a list of State-certified M/WBEs from <https://ny.newycontracts.com/> and solicit bids from them directly.
- (3) Obtain a list of State certified SDVOBs from <https://online.ogs.ny.gov/SDVOB/search> and solicit bids from them directly.
- (4) Ensure that plans, specifications, requests for proposals, and other documents used to secure bids will be made available in sufficient time for review by prospective M/WBEs and SDVOBs.
- (5) Where feasible, divide the work into smaller portions to enhance participation by M/WBEs/SDVOBs and encourage joint ventures and other partnerships among M/WBE/SDVOBs contractors to enhance their participation.
- (6) Document and maintain records of bid solicitation, including those to M/WBEs/SDVOBs and the results thereof. This organization will also maintain records of actions that its subcontractors have taken toward meeting M/WBE/SDVOB contract participation goals.
- (7) Ensure that progress payments to M/WBEs/SDVOBs are made on a timely basis so that undue financial hardship is avoided and that, if legally permissible, bonding and other credit requirements are waived, appropriate alternatives developed to encourage M/WBE/SDVOB participation.

EEO

- (a) This organization will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability, or marital status, will undertake or continue existing programs of affirmative action to ensure that minority group members are afforded equal employment opportunities without discrimination, and shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its workforce on state contracts.
- (b) This organization shall state in all solicitation or advertisements for employees that in the performance of the State contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, disability, or marital status.
- (c) At the request of the Sponsor, this organization shall request each employment agency, labor union, or authorized representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability, or marital status and that such union or representative will affirmatively cooperate in the implementation of this organization's obligations herein.
- (d) This organization shall comply with the provisions of the Human Rights Law, all other State, and Federal statutory and constitutional non-discrimination provisions. This organization and subcontractors shall not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status, or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.
- (e) This organization will include the provisions of sections (a) through (d) of this agreement in every subcontract in such a manner that the requirements of the subdivisions will be binding upon each subcontractor as to work in connection with the State contract.

Agreed to this 10th day of June, 2022

By Richard J Hendrick

Print: Richard J Hendrick Title: CEO

_____ (Name of Designated Liaison) is designated as this organization's Minority and Women-Owned Business Enterprise Liaison and Service-Disabled Veteran Owned Business Liaison responsible for administering M/WBE/SDVOB-EEO program.

The GRANTEE agrees that the Standard M/WBE and/or SDVOB Contract Goals for projects let and funded (in whole or in part) with proceeds of this Agreement (Contract # _____) are provided below.

STANDARD CONTRACT GOALS

CATEGORY/CONTRACT TYPE	MBE	WBE	SDVOB
C: Commodities	12.00%	15.00%	6.00%
CC: Construction Consultants (Architectural/Engineering)	20.00%	9.00%	6.00%
CN: Construction	9.00%	13.00%	6.00%
SC: Services/Consultants (Non-Architectural/Engineering)	6.00%	13.00%	6.00%

These Standard Contract Goals are based on the New York State Department of Transportation's (NYSDOT's) Agency M/WBE and SDVOB Goal Plan as a result of programmatic analysis. The plans are available at: <https://www.dot.ny.gov/main/business-center/civil-rights/mwbe-program> and <https://www.dot.ny.gov/main/business-center/civil-rights/sdvo-program>. In furtherance of such goals, the Municipality/Sponsor/Grantee is also required to consider the following statutory factors in all related contracts executed by the Sponsor/Municipality/Grantee:

- (1) the contract and subcontract scope(s) of work,
- (2) the potential subcontract opportunities available in the prime contract,
- (3) the relevant availability data contained within the disparity study with respect to the scope of the contract and potential subcontracting opportunities,
- (4) the number and types of certified minority-owned and women-owned business enterprises (M/WBE) found in the directory of certified minority-owned and women-owned businesses available to perform the related contract work and the number and types of certified service-disabled veteran-owned businesses (SDVOB) found in the SDVOB directory available to perform the related contract work,
- (5) the geographic location of the contract performance,
- (6) the extent to which geography is material to the performance of the contract,
- (7) the ability of certified M/WBEs and SDVOBs located outside of the geographic location of contract performance, notwithstanding the regional location of the certified enterprise, to perform on the GRANTEE's contract,
- (8) the total dollar value of the work required by the GRANTEE's contract in relation to the dollar value of the subcontracting opportunities; and
- (9) the relationship of the monetary size and term of the GRANTEE's contract to the monetary size and term of the project for which the contract is awarded (See 5 NYCRR 142.2 and 9 CRR-NY 252.2(h)).

Pre-Advertisement: As a result of GRANTEE's analysis of the statutory factors in relation to a contract's work scope and circumstances, if the GRANTEE believes a non-standard goal is appropriate and supportable, the GRANTEE may obtain NYSDOT approval by submitting a M/WBE and/or SDVOB Pre-Advertisement Goal Modification Request, with justification, prior to public advertisement of the contract.

Pre-Award: If the GRANTEE receives proposals or bids that do not provide commitments that meet or exceed the advertised goals, the GRANTEE must obtain NYSDOT approval by submitting a M/WBE and/or SDVOB Waiver Request *demonstrating the Contractor's Good Faith Efforts to meet the goals, along with supporting justification, prior to awarding the contract.*

Post Award: If any consultant/contractor fails to attain its M/WBE and/or SDVOB commitment on a contract, the GRANTEE must obtain NYSDOT approval by submitting a M/WBE and/or SDVOB Waiver Request, *demonstrating Good Faith Efforts to meet the goals, along with supporting justification before NYSDOT will distribute final payment of grant proceeds.*

All forms referenced above are available at: <https://www.dot.ny.gov/main/business-center/civil-rights/>
Nothing stated within this or associated document(s) guarantees NYSDOT's approval of a goal modification or goal waiver.

Signature: Richard J. Hernandez Title: CEO
Name: Richard J. Hernandez Date: 6-10-22

**RESOLUTION 25-2022
OF THE
ALBANY PORT DISTRICT COMMISSION**

WHEREAS, the Albany Port District Commission (the "APDC") is a public corporation and a district corporation of the State of New York established pursuant to Chapter 192 of the Laws of 1925, as amended; and

WHEREAS, the Port of Albany Maritime Freight Handling Expansion Project, Project Identification Number 1936.01.301 ("the Project") has been awarded \$4,800,000 of Rail Preservation Purpose funds for the payment of New York State's share of eligible Project costs in accordance with the provisions of the Section 14 of the New York State Transportation Law, as administered by the NYS Department of Transportation ("NYSDOT"); and

WHEREAS, the total cost for the Project is estimated to be \$11,170,000 and the APDC has determined that the Project is in the best interests of the public and in furtherance of the mission of the APDC; and

WHEREAS, the APDC desires to advance the Project by making a commitment of at least \$6,370,000 APDC funding of the costs of the Project.

NOW, THEREFORE, the APDC duly convened does hereby:

RESOLVED, that the APDC hereby approves the Project; and it is hereby further

RESOLVED, that the APDC agrees to provide at least \$6,370,000 in funding for the Project; and it is further

RESOLVED, that the Chief Executive Officer of the APDC is hereby authorized to execute all necessary agreements, certifications or reimbursement requests for NYSDOT funding on behalf of the Chairperson of the APDC with NYSDOT in connection with the advancement or approval of the Project and providing for the administration of the Project and the APDC's funding of the Project costs; and it is further

RESOLVED, that the APDC reaffirms and ratifies any documents executed by the Chief Executive Officer related to the implementation of the Project executed prior to the date of this Resolution; and it is further

RESOLVED, in the event the full costs of the project exceeds the amount appropriated above the APDC shall convene as soon as possible to appropriate said excess amount immediately upon notification by the staff thereof; and it is further