

NEW YORK CITY TRANSIT AUTHORITY

Department of Materiel

INFORMATION FOR BIDDERS

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1. RECEIPT OF BIDS

- A. The New York City Transit Authority (hereinafter referred to as “the Authority”) for the purposes hereof shall include its subsidiary, the Manhattan and Bronx Surface Transit Operating Authority, and its affiliate, the Staten Island Rapid Transit Operating Authority. The Authority hereby solicits bids for the furnishing of the goods and/or services described in the Bid Quotation Sheet attached hereto. Bids may be submitted in person to the Bid Reception Desk, 3 Stone Street, New York, NY 10004, Monday through Friday, between the hours of 9:00 a.m. and 4 p.m., excluding holidays observed by the Authority. Bids will be accepted up until the time and date indicated in the bid quotation sheet, at which time the Bid will be publicly opened (hereinafter, the “Bid Opening”).
- B. If additional time is required to bid, the potential Bidder should submit a written request to the Department of Materiel to obtain such additional time. The Authority will be the sole judge of whether a time extension will be granted.
- C. Bids received after such time will be considered late and will not be considered for awards, except as otherwise permitted under Authority written procurement procedures.
- D. The Authority’s Department of Materiel is responsible for all matters related to this solicitation/procurement and has designated an individual (the “Procurement Representative”) as the “Point of Contact” to administer same. All contacts by the Bidder from solicitation inception through award shall be made only to such Procurement Representative.

2. CONTRACT DOCUMENTS/BID SOLICITATION PACKAGE

- A. The Information for Bidders, the Bid (including the Bid Quotation Sheet), the Contract Terms and Conditions, the Special Terms and Conditions, all Schedules (excluding Schedule J, Responsibility Questionnaire), all Addenda (if any) issued, the Technical Specifications (if any), the Contract Drawings (if any), and the Acceptance and Order (Notice of Award) constitute the Contract and shall be referred to collectively as the “Contract” or the “Contract Documents.”
- B. The Contract Documents, including Schedule J, Responsibility Questionnaire, if attached, and the Important Notice to Bidders, excluding the Acceptance and Order (Notice of Award), shall be referred to collectively as the “Bid Solicitation Package.”

3. SUBMISSION OF THE BID

- A. A bid must be fully and properly completed and duly executed by a person with authority to legally bind the Bidder on the forms entitled “Bid” and “Bid Quotation Sheet” in accordance with the instructions set forth therein.
- B. **BIDDERS MUST RETURN THE BID (AND ALL REQUIRED FORMS) WHICH INCLUDES THE BID QUOTATION SHEET IN ITS ENTIRETY. IN ADDITION, BIDDERS MUST ATTACH COPIES OF EACH ADDENDUM ISSUED OR OTHERWISE ACKNOWLEDGE RECEIPT OF EACH ADDENDUM AS INDICATED IN THE BID. AN ADDENDUM WHICH CHANGES ANY PART OF THE BID**

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QUOTATION SHEET MUST BE ATTACHED OR THE CHANGE OTHERWISE CLEARLY INCORPORATED ON THE BID QUOTATION SHEET. The Authority, in its sole and absolute discretion, may treat a failure to annex or acknowledge receipt of addenda or to attach any part of the Bid as a minor informality where the addenda or portion of the Bid, as the case may be, is determined by the Authority not to be substantive in nature.

- C. In order to prevent misrouting or premature opening of Bids, the envelope in which the Bid is submitted (along with any other documents required by the Bid Solicitation Package to be submitted) must state on its face the **Contract Number, Title, Bid Opening Date, and Company Name and Address.**
1. If the bid envelope is in turn enclosed in a special courier pouch or Express Mail envelope, such pouch or envelope should be denoted as a “BID” and labeled with all the same information. The envelope should bear the name and return address of the Bidder.
- D. It is the Bidder’s responsibility to get its Bid to the Authority’s Bid Reception Desk in time for the Bid Opening. **Bids will be regarded as timely only if they in fact reach the Bid Reception Desk before the time of the Bid Opening, regardless of the method of delivery.**
1. **Note:** Due to the large volume of mail received at the Authority’s office address, Bids received in the Authority’s mailroom or other Authority offices may not be sorted and transmitted to the Bid Reception Desk in time.
- E. Depending on the method of delivery selected by the Bidder, the Bidder is to submit its Bid to the Authority by sending the Bid package to one of the following addresses, as appropriate.
1. Delivery in Person, by Messenger or Private Express Courier: Bids delivered in this manner should be addressed and delivered to:

New York City Transit Authority
3 Stone Street
New York, NY 10004
Attention: Bid Reception Desk
 2. Delivery by U.S. Postal Service (including Postal Service Express Mail) (“USPS”): If a Bidder chooses to deliver its Bid to the Authority utilizing the USPS, Bidders are therefore strongly advised to mail Bids to the Authority’s Post Office Box provided below, with sufficient time to allow sorting at the USPS facility and pick up by the Authority by 7:00 a.m. on the Bid Opening Date.

New York City Transit Authority
P.O. Box 24628
Brooklyn, NY 11202-0440
Attention: Bid Reception Desk
- F. Bids submitted in person, by messenger or by private express courier are accepted by the Bid Reception Desk Monday through Friday, between the hours of 9:00 a.m. and 4:00 p.m., excluding Authority-observed holidays.

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G. All Bids will remain sealed until the date and time specified for public Bid Opening.

4. GOODS TO BE FURNISHED OR WORK OR SERVICES TO BE PERFORMED

A. If “Services” are the subject matter of this Contract they must be as specified in the Contract Documents and include the services to be furnished, together with any labor, material or other work necessary for satisfactory performance.

B. If “Goods” are the subject matter of this Contract they must be as specified in the Contract Documents and include the article to be furnished, together with any labor, service or other work necessary for satisfactory performance. Goods must be marked and packaged in accordance with U.S. Standard measurements and nomenclature, using the English language.

C. With respect to the Goods to be furnished hereunder, their quantities, delivery schedule, and delivery points are set forth in the Contract Documents and, unless otherwise specified, all Goods furnished to the Authority must be new and unused.

5. BRAND NAMES/SUBSTITUTION OF SPECIFIED MATERIAL

A. Wherever in the Contract Drawings or Specifications a particular brand, or make of material, or equipment is shown or specified, such material or equipment is to be regarded merely as a standard for the purpose of concisely indicating the requirements as to type, quality, performance, design and finish. Any material or equipment other than that specified will be acceptable if, in the opinion of the Authority, it is as satisfactory for the particular work for which it is intended as the material or equipment specified. Complete documentation in support of an “or equal” contention will be required. Bidders are obligated to furnish all data and information as the Authority in its discretion deems necessary to establish the equality of the alternative material or equipment. Any additional cost incurred by the Authority, other than for the initial review of documents submitted in connection with a request for approval of a proposed substitution, shall be borne by the requestor. The Authority may require that a presentation be made for any proposed substitution. The Authority reserves the right to reject any such other material or equipment offered which is not approved by the Authority as being in all respects equal to the named material or equipment for the work for which it is to be used. Such rejection may be for any reason deemed appropriate by the Authority including, without limitation, the expense and/or time needed to evaluate such material or equipment.

B. If Bidder desires to have an “or equal” approved, it shall notify the Authority, which shall thereupon advise the Bidder of any requirements for approval of such item including any required testing where appropriate. Unless there is a specific statement in the Contract Documents to the contrary, bidders are advised that requests for such approval of any alternative material or equipment may be made either prior to or after Bid Opening. If a request is made prior to Bid Opening, the Authority will endeavor to issue its approval of an alternate material or equipment by Addendum. In the case where pre-Bid Opening approval or disapproval has not taken place, the Bidder will not be permitted to withdraw its Bid on the basis of a claimed mistake in this regard.

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- C. The Bidder is obligated to furnish all data and information as the Authority in its discretion deems necessary to establish the equality of the alternative material or equipment. If the Bidder seeks reconsideration of any determination with respect to equivalency, the Authority shall have discretion to reconsider the matter. In the event of a reconsideration the Bidder shall be obligated to pay all Authority expenses in connection therewith.
- D. The Authority shall be the sole judge of the acceptability of items offered as equal to that specified and may reject any item not considered as equal thereto. The Bidder must submit proof satisfactory to the Authority, including a non-returnable sample if requested by the Authority, that the item the Bidder offers is equal to the material or equipment specified in quality, performance and such other characteristics as the Authority may deem relevant.
- E. The Authority may consider as evidence of equivalency an independent laboratory certification concluding that the Bidder's proposed item meets or exceeds all requirements and standards, including performance criteria, of the particular brand or make of material or equipment specified by the Authority. The laboratory must be accredited by the American Association for Laboratory Accreditation or be otherwise acceptable to the Authority.
- F. If the Bid Solicitation Package identifies an item as a chemical commodity, see Paragraph 28.
- G. In instances where bidders can satisfactorily prove that they have provided a product equal to that specified herein, and which is used in an environment similar to the New York City Transit System with an acceptable record of quality and use, the product may be considered de facto approved subject to first article acceptance. The provisions of this subparagraph are not applicable to products which are on the Authority's Qualified Products List.

6. PRICING

- A. ALL PRICES BID MUST BE FIRM, i.e., no price adjustments are allowed unless expressly permitted by the Bid Solicitation Package.
- B. All bid prices shall include, without limitation, delivery charges, demurrage, insurance, packing, boxing, container charges or any other expenses incidental to the Work. All bid prices are deemed to be F.O.B. delivery point. Any bid other than F.O.B. delivery point or quoting additional charges or otherwise not in accordance with these requirements shall render the Bid **nonresponsive**.
- C. All bid prices for the Work shall be deemed to include the cost of all work, labor and materials required by the Contract Documents, including all work necessary therefor or incidental thereto, as well as all expenses associated with compliance with laws, rules and regulations of Federal, State or local authorities.
- D. Each prospective Bidder is advised that the provisions of the New York State Tax Law provide an exemption from sales and compensation use taxes on all tangible personal property (materials, equipment and components) sold to contractors or subcontractors in connection with the Work required by the Contract, and which will become an integral component part of that Work. Similarly, the Public Authorities Law exempts sales of goods to the Authority from New York sales and compensating use taxes. Federal Law also affords the Authority an exemption from

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Federal excise taxes. No amount shall be included in the Bidder's price for any possible New York State sales or compensating use taxes as well as any Federal excise tax on such personal property or goods. The Authority's Tax Exemption Certificate No. is 11-6002815.

- E. The Bidder must quote a price on every line item listed according to the units of measure set forth in the Bid Quotation Sheet, which it proposes to furnish. No unit price may be extended more than four decimal places. Any figure(s) shown beyond the fourth decimal will automatically be dropped (e.g., 1.2345678 will become 1.2345). The total value of the Bid will be expressed in figures containing not more than two decimal places. In the event of a tie bid, **PARAGRAPH 10.B.** will apply.

7. DISCOUNTS

Bidders may offer cash discounts for payment by the Authority earlier than the payment period set forth in **ARTICLE 11 of the CONTRACT TERMS AND CONDITIONS**. However, such cash discounts will not be taken into account in determining the low Bidder.

8. RESPONSIVE BIDS

Bidders are advised that a qualified or conditional Bid, or one which is at variance with any provision of the Bid Solicitation Package, including the submission of a Bidder's own terms and conditions, or fails to meet any requirement thereof applicable to the Bid, may be rejected as **nonresponsive**. The Authority reserves the right to waive minor errors or omissions with respect to a Bid.

9. UNBALANCED BIDS

When a class bid is indicated for variable quantities of Goods and the Bid for the class shows evidence of unbalanced bid prices (e.g., some of the items represent nominal prices while others are grossly inflated), such Bid may be deemed **nonresponsive**.

10. AWARD PROCEDURE

- A. Award of the Contract will be made by issuance of a written "Acceptance and Order" or "Notice of Award" informing the successful Bidder that its Bid has been accepted and that it has been awarded the Contract.
- B. The Contract will be awarded to the lowest responsive and responsible Bidder, except as otherwise permitted by law. The Authority also reserves the right to reject any and all Bids in its sole and absolute discretion. In the event of tie Bids, the Authority reserves the right to determine the successful Bidder by lot or otherwise in its discretion.
- C. The Authority reserves the right to conduct a cost analysis prior to award. Should the Authority determine to make such an analysis, the Bidder will be required to provide all appropriate information and/or data requested by the Authority in conducting the analysis. In addition, bidders are advised that prices submitted on an "Invitation for Bid" could be subject to audit if (a) the bid turns out to be the only bid and (b) the bid prices undergo negotiation.

11. ITEM AND CLASS AWARDS

- A. Item Award: Except as otherwise expressly indicated in the Bid Quotation Sheet, the Contract(s) will be awarded on an “item” basis, i.e., a separate award will be made to the lowest responsive and responsible Bidder for each item set forth in the Bid Quotation Sheet. **The Bidder may bid on one or more or all of the items.** A Bidder will be considered only for the items(s) for which it has set forth a bid on the Bid Quotation Sheet. Where the Bid Quotation Sheet calls for a single lump sum price, this will be considered as an item award.
- B. Class Award: If indicated in the Bid Quotation Sheet as a class award then this Contract will be awarded on a “class” basis, i.e., a single award will be made to the lowest responsive and responsible Bidder based upon the total aggregate price for all items set forth in the Bid Quotation Sheet. Where the Bid Quotation Sheet sets forth more than one class of items, the Bidder may bid on one or more or all of such classes, but **the Bidder must bid on each item within a given class.** A Bidder desiring to bid “no charge” on an item in a class must indicate this clearly. A submitted Bid Quotation Sheet not setting forth the Bidder’s price for each item or “no charge” within a class may be deemed incomplete and is subject to being rejected regarding such class.

12. BIDDER’S QUALIFICATIONS

- A. In order to qualify as a responsible bidder, in addition to the other requirements herein provided, a Bidder must be prepared to prove to the satisfaction of the Authority that it has the integrity, skill, and experience to faithfully perform the Contract and that it has the necessary facilities and financial resources to perform the Work in a satisfactory manner and within the time specified. All bidders, whose Bid equals or exceeds \$250,000, shall complete and submit, Parts I, II and VII of the form entitled **RESPONSIBILITY QUESTIONNAIRE (SCHEDULE J)** with their Bid. The apparent low Bidder shall complete and submit Parts V and VI to the Procurement Representative within three (3) working days after receiving written notification.
- B. The Bidder agrees to provide the Authority additional information, or to clarify or supplement information already furnished, including but not limited to information relating to its past performance, its plan for performing the Contract, investigations, indictments, convictions, the Bidder’s safety practices and record, and financial conditions. The Bidder agrees to permit the Authority to conduct site visits to Bidder’s plant, current work sites, and other locations.
- C. To be considered skilled and experienced, the Bidder must show, among other requirements to the Authority, that it has satisfactorily supplied Goods or performed work or services as the same general type as that called for under the Contract.
- D. Bidder shall also be required to secure the necessary insurance policies, as required by **SCHEDULE A, INSURANCE REQUIREMENTS**, or necessary licenses, permits or certificates, required by any legislative or regulatory body with jurisdiction of the subject matter and may be required to furnish evidence of same.
- E. A Bidder in arrears in the payment of amounts due to the City of New York, the Metropolitan Transportation Authority, the Authority or any of its affiliated agencies will be required to pay said amounts in full in order to be considered a responsible Bidder, unless and to the extent that

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the Authority, upon satisfactory explanation made by the Bidder, excuses him from the payment thereof or permits further deferment of payment.

- F. The apparent low Bidder may be required to appear at the office of the Chief Procurement Officer for a qualification hearing, at such date and time that the Authority may select upon notice to the Bidder, to demonstrate that the Bidder is a responsible Bidder. At such time, the Bidder shall furnish bonds, proof of insurance, financial statements, or other documents as may be required by the Contract Documents. If the qualification hearing is held within ten (10) days of the Bid Opening, the Authority will accept as evidence of compliance with Performance and/or Payment Bond requirements a letter or certificate from an acceptable surety or sureties, as the case may be, which satisfactorily establishes to the Authority that an acceptable surety will issue the necessary bonds not later than thirty (30) days from the date of Bid Opening, in which event the Bidder shall furnish any such bonds within thirty (30) days after Bid Opening.
- G. The Bidder is required to be adequately financed to pay promptly for all labor and materials as such obligations become due and to avoid the necessity for assignment of any monies payable. The Bidder must be prepared to submit a sworn statement, in the form furnished by the Authority (see paragraph 12.a. above), of the Bidder's financial condition, as of a date not more than sixty (60) days prior to the date when the bids are received, and to be examined thereon.
- H. If attached, **SCHEDULE X, FEDERAL DRUG AND ALCOHOL TESTING REQUIREMENTS**, applies to this solicitation and any resultant Contract.

13. SECURITY FOR PERFORMANCE

Bidders are hereby notified that **SCHEDULE Q, BONDING REQUIREMENTS AND FORMS OF BONDS**, if included in the LIST OF SCHEDULES sets forth the requirements for Performance or Payment Bonds or other security requirements.

14. BID WITHDRAWAL

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

15. BID MISTAKE

- A. A Bidder who seeks permission to withdraw its Bid due to a mistake or error in preparation of its Bid shall so notify the Authority, in writing, no later than close of business on the third business day following the date of the public Bid Opening (the business day following the day of the public

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Bid Opening being counted as the first day). The notice shall specify the details of the claimed error or mistake. Thereafter, the Authority shall evaluate the matter and determine if the Bidder will be permitted to withdraw its Bid.

- B. To assist in its determination, the Authority may conduct a hearing on the matter, wherein the Bidder shall, if requested by the Authority, give testimony and present documentation, including Bidder's original bid computation sheets and calculations.

16. BID SECURITY

- A. Bidders are hereby notified that **SCHEDULE Q, BONDING REQUIREMENTS AND FORMS OF BONDS**, if included in the LIST OF SCHEDULES, sets forth the requirements for Bid Security. The Bid Security must be submitted in the form of a certified or cashier's check or a bid bond in an amount equal to five percent (5%) of the Gross Sum Bid (defined in the **Bid, Section J3**).
- B. A certified or cashier's check shall be made payable to the order of the Authority and shall be drawn upon a national or State bank or trust company. The bid deposit, in whatever form, must be enclosed in a separate envelope endorsed with the contract number and title, and the Bidder's name and submitted to the Authority upon presentation of the Bid.
- C. If included in **SCHEDULE Q, BONDING REQUIREMENTS AND FORMS OF BONDS**, a bid bond may be submitted as Bid Security in the form prescribed by the Authority, a copy of which is attached or appended to the Bid Solicitation Package, and shall be issued by a corporate surety in good standing and licensed to do business in the State of New York. Attorneys-in-fact who sign bid bonds or contract bonds must file with each bond a certified copy of their power of attorney to sign said bonds.
- D. Deposits of certified or cashier's checks by bidders, except the apparent lowest and next to lowest Bidders, will be returned within ten (10) days after the opening of bids. The deposit of the apparent second lowest Bidder will be returned within five (5) days after the award of the Contract. The deposit, if it consists of the certified or cashier's check, will be returned to the Contractor within five (5) days after the award of the Contract. All deposits will be returned without interest.

17. DEFAULT REGARDING A BID

- A. A Bidder who fails to submit data required for, or to appear at any hearing to determine its responsibility, or fails to respond to questions regarding qualification for an award of the Contract herein, but who would otherwise have been eligible for the award of this Contract, will be in Default Regarding a Bid as expressly provided herein.
- B. A Default Regarding a Bid shall occur by failure of such Bidder to timely submit (if required by the Contract Documents): (i) Performance and Payment Bonds; (ii) Minority and Women-Owned Business Enterprise Submissions; (iii) insurance policies and certificates of insurance; or (iv) any other submission required to be submitted prior to an Award. Except with respect to a Bidder's failure to timely submit the completed MBE/WBE Submissions, a Bidder shall not be deemed in

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Default regarding a Bid if any such failure is without the fault or neglect of the Bidder or Bidder's employees or agents.

- C. Upon default, the Authority may retain the bid security, or as much thereof as may be necessary to cover the damages and proceed to contract with such, if any of the original Bidders as, in its opinion, will advance the interests of the Authority or may invite further bids. The defaulting Bidder shall thereupon, in either case, be liable to the Authority for all loss and damage sustained by it by reason of such default.

18. INSPECTION OF PROJECT SITE AND PRE-BID CONFERENCE

If a tour inspection of the project site is required or a pre-bid conference is to be held, further information concerning the date, time and place will be stated on the actual Bid Quotation Sheet.

19. ADDENDA AND REQUEST FOR CLARIFICATION

- A. Prior to bidding, each prospective Bidder should examine the Bid Solicitation Package carefully and submit in writing to the Procurement Specialist any requests for:
 - 1. an interpretation or correction of any ambiguity, inconsistency, or error therein; or
 - 2. any amendments which the Bidder desires to have made in the Bid Solicitation Package.
- B. To be given consideration, any such request must be in writing and must be received by the Authority at least ten (10) working days prior to the date designated, for the opening of bids, or such shorter period as the Authority, in its sole discretion, shall allow.
- C. Any such interpretation, correction or amendment, as well as any additional provision the Authority may decide to include in the Bid Solicitation Package, will be issued in writing by the Authority prior to Bid opening as an addendum to the Contract. Addenda are binding upon the Bidder upon issuance. Issuance of an addendum is defined as the filing of a copy of such addendum at the Bid Reception Desk, 3 Stone Street, New York, NY 10004, where a copy will be made available to any prospective Bidder so requesting. The Authority will endeavor to mail addenda or otherwise transmit to each person recorded as having been furnished a copy of the Bid Solicitation Package. Bidders, however, are responsible for insuring their receipt of all addenda.
- D. Only a written interpretation or correction issued by addendum by the Authority shall be binding. A Bidder's failure to request such an interpretation or correction will preclude such Bidder from thereafter claiming any ambiguity, inconsistency, or error which should have been discovered by a reasonably prudent Bidder.

20. NO LONGER USED - SEE SCHEDULE K – MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISE SUBMISSION REQUIREMENTS - BID

21. COMPLIANCE WITH LAWS, RULES AND REGULATIONS

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- A. A Bidder must be prepared to comply with any and all local, State and Federal laws, rules and regulations applicable to the subject matter of this Contract, including those relating to environmental matters.
- B. In accordance with the New York State Finance Law §165-2, the Authority is prohibited from purchasing any tropical hardwood or tropical hardwood products as defined in §165-1, b. Bidders are advised to review **ARTICLE 32, PARAGRAPH F “PROHIBITION ON THE PURCHASE OF TROPICAL HARDWOODS” OF THE CONTRACT TERMS AND CONDITIONS.**
- C. If a Bidder believes that it may furnish or supply tropical hardwood under an exception to the provisions of §165-2, a request for a determination should be made in writing, to the Procurement Representative, at least ten (10) days prior to the scheduled Bid Opening.

22. PROMPT PAYMENT

Pursuant to Section 2880 of the Public Authorities Law, a copy of the MTA’s Statement of Rules and Regulations with respect to prompt payment of invoices will be made available to any Bidder or prospective Bidder requesting same of the Procurement Representative.

23. BUY AMERICA STEEL PROVISIONS

- A. This Contract is subject to Section 2603-a of the Public Authorities Law (Chapter 441, Laws of 1983) entitled “Letting of Certain Contracts Involving Steel Products.” This provision, hereinafter called “Buy America Steel Provision,” requires the Board of each Public Authority to implement such law and to determine whether application of the provisions thereof would result in unreasonable costs or that steel products or steel components cannot be produced or made in the United States in sufficient and reasonably available quantities or of satisfactory quality or design. The Authority has adopted the following guidelines with respect to the implementation of such provisions, which will be applicable to this Contract:

B. GUIDELINES

1. Definition. Steel component means a product rolled, formed, shaped drawn, extruded, forged, cast, fabricated or otherwise similarly processed or processed by a combination of two or more operations, from steel.
2. Supplies, material, or equipment shall be deemed to be made of, fabricated from or contain a steel component or steel components if the cost of the steel component or components exceeds fifty percent (50%) of the cost of the material content of the supplies, material or equipment. Such supplies, materials and equipment shall be referred to herein as “steel products.”
3. A steel component, including structural steel and reinforcing steel, shall be deemed to have been produced or made in whole or in substantial part in the United States, its territories or possessions if the cost of the portion thereof, including both materials and processes, produced or made in the United States, its territories or possessions, exceeds

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fifty percent (50%) of the cost of the component. Such steel components shall be referred to herein as “domestic steel components.”

4. Procedures.
 - a. Bidders are permitted and are encouraged to utilize domestic steel and to submit bids for steel products containing domestic steel components. They may also submit bids for steel products not domestically produced.
 - b. The provisions of this Paragraph 23 are applicable to the purchase of steel products estimated to cost in excess of \$50,000 and for contracts for construction, reconstruction, alteration, repair, or maintenance of a facility estimated to be in excess of \$100,000. Bidders must complete and return the Domestic Steel Certification, which is included in the Bid. Bidders shall state therein the amount of the Bid, which represents the cost of steel components, stated separately for domestic steel components and foreign steel components.
 - c. In a competitively bid contract, the cost of a domestic steel component shall be deemed reasonable if the lowest responsive and responsible Bidder has offered all or substantially all domestic steel components.
 - d. In a competitively bid contract, if a bid including domestic steel components is responsible and responsive, but not the lowest, a credit shall be allowed in the amount of six percent (6%) of the cost of the foreign steel components contained in the lowest responsive and responsive bid, and the Contract shall be awarded to the lowest responsive and responsive Bidder offering domestic steel components if the subtraction of such credit from the amount of its bid makes such bid the lowest responsive and responsive bid.
 - e. The procedures provided in (4) shall not be used if its application would result in the award of a contract utilizing domestic steel components of less total cost than if such procedure were not followed.
 - f. If no bid is received which includes steel components produced or made in the United States, a conclusive presumption shall be made that such steel component or components are not available domestically.
 - g. If a negotiation is undertaken with one party only, evidence must be submitted that the cost of a foreign steel component is at least six percent (6%) less than the cost of domestic steel components if foreign steel components are offered.
5. A determination that steel products or steel components are not produced or made in the United States of satisfactory quality or design shall be made by the Board of the Authority on a case by case basis.
6. Emergency Procurements. In an emergency, steel products shall be deemed not to be produced or made in the United States in sufficient and reasonable available quantities or of satisfactory quality or design if after reasonable inquiry, the Authority determines that

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such steel products cannot be obtained within the six percent (6%) cost differential referred to in subparagraph d. within the time required by the emergency.

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

C. POST AWARD DETERMINATION

1. If in submitting its Bid, the Contractor certified that it would supply domestic steel products or components but finds out after Contract award that the steel products or components cannot be produced or manufactured in the United States but may be obtained using foreign steel, the Contractor will make a request in writing, to the Authority’s Chief Procurement Officer with a copy to the Project Manager, that the Authority make a determination that the steel product(s) or steel component(s) are not produced or made in the United States of satisfactory quality or design. The Contractor’s request will contain the following information:
 - a. the Authority’s contract or purchase order number, and the Authority’s part or specification number;
 - b. an explanation why the Contractor was unable to ascertain prior to award that it could not obtain the steel product(s) or components(s) of satisfactory quality or design produced or made in the United States;
 - c. for both the domestic steel supplier or manufacturer and the proposed foreign steel supplier or manufacturer the following:
 - i. supplier or manufacturer’s name;
 - ii. supplier or manufacturer’s part number;
 - iii. cost (including associated costs for the item such as shipping); and
 - iv. delivery schedule or time of availability;
 - d. a written statement from the domestic steel supplier or manufacturer that it is no longer manufacturing or producing the specified item(s), or a sworn statement from the Contractor that the domestic steel supplier or manufacturer is no longer in business;
 - e. an explanation as to what efforts the Contractor has made to obtain a substitute product manufactured or produced from domestic steel that meets or exceeds the Authority’s requirements; and
 - f. any additional information that the Authority may request in support of the Contractor’s request for a determination.

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2. If the Authority in making the award to the Contractor allowed the Contractor a six percent (6%) credit against other bidder(s) offering foreign steel components and the Authority makes a determination that an exception to the Buy America requirements applies, then the Authority shall be entitled to a price adjustment reducing the total amount payable to the Contractor. The price adjustment shall be derived by taking the difference of the dollar value (if any) of the foreign steel components proposed by the Contractor in its Bid and the dollar value of foreign steel components proposed by the bidder against which the credit was taken; times (X) the sum of the six percent (6%) credit plus (+) a four percent (4%) administrative fee; times (X) a fraction of which the numerator is the dollar value of the domestic steel components proposed by the Contractor for the exception; the denominator of which is the dollar value of the domestic steel components proposed by the Contractor in its Bid.

Example:

\$ value of foreign steel components proposed by the bidder against which the credit was taken less (-) \$ value of foreign steel components proposed by the Contractor in its Bid (if any)	X	10%	X	\$ value of domestic steel components proposed by the Contractor for an exception divided by (□÷) \$ value of domestic steel components proposed by the Contractor in its Bid
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3. If the Authority determines that an exception to the Buy America requirements applies, a modification to this Contract will be executed allowing the use of foreign steel products or foreign steel components.

24. BID PROTEST

- A. Protests will only be accepted from prospective or actual bidders whose direct economic interest would be affected by the award or non-award of the Contract. Protests must be in writing and will generally not be considered unless submitted within five (5) business days from the date the protestor knew or should have known the facts forming the basis of the protest. Protests prior to a bid due date should be filed not later than five (5) business days prior to the due date in order to be considered timely. Unsolicited supplemental protest submissions will generally not be considered. Protest must include at least the following information: name, address, telephone and fax numbers of the protestor, the solicitation bid or contract number, a detailed statement of the legal and factual grounds for the protest including copies of relevant documents and a statement as to what relief is requested. A protest found by the Chief Procurement Officer or his or her designee (the "Protest Officer") in his or her sole discretion to be patently without merit or not brought in a timely manner shall be rejected without further consideration. The Protest Officer may take any action or make any requests he or she deems necessary in order to investigate the protest and develop a recommendation or disposition of the protest.

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- B. The Chief Procurement Officer may determine that an award must be made prior to resolution of the protest when the Authority determines that:
1. the items to be procured are urgently required; or
 2. delivery or performance will be unduly delayed by failure to make the award promptly; or
 3. failure to make prompt award will otherwise cause undue harm to the Authority.
- The protestor will be given a written notice of the decision to proceed with the award.
- C. Post Award Protests. Protests after an award should be received by the Authority not later than two (2) calendar weeks after the award and are subject to the substantive requirements as provided in subparagraph a, above. Post-award protests received more than two (2) calendar weeks after the award of a contract shall be considered an “informal inquiry” and will be referred to the appropriate parties administering the contract.
- D. A copy of the Authority’s Protest Procedures may be obtained by contacting the Procurement Representative.

25. OMNIBUS PROCUREMENT ACT OF 1992 AND RELATED MATTERS

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

INFORMATION FOR BIDDERS

A. Definitions:

1. New York State Business Enterprise - shall mean a business enterprise, including a sole proprietorship, partnership, or corporation, which offers for sale or lease or other form of exchange, goods which are sought by a New York State public authority or public benefit corporation, which are substantially manufactured, produced or assembled in New York State, or services, which are sought by the public authority or public benefit corporation and which are substantially performed within New York State.
2. Foreign Business Enterprise - shall mean a business enterprise, including a sole proprietorship, partnership, or corporation, which offers for sale or lease or other form of exchange, goods sought by the Authority and which are substantially produced outside New York State, or services which are sought by the Authority and which are substantially performed outside New York State.
3. New York Resident - shall mean a natural person who maintains a fixed, permanent and principal home located within New York State and to which such person, whenever temporarily located, always intends to return.
4. Procurement Contract - shall mean any written agreement entered into by the Authority for the acquisition of goods or services of any kind, in the actual or estimated amount of \$15,000 or more. The term does not include an agreement for employment in civil service.

B. **All Bidders submitting a bid equal or greater than one million dollars** shall provide notification to and shall make reasonable efforts to encourage the participation of New York State Business Enterprises of opportunities to participate, in the Contract, as subcontractors or suppliers.

C. Bidders are advised that information on the availability of New York State subcontractors and suppliers is available:

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

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

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

Online at <https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp>

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

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Albany, NY 12245
(518) 292-5250
or
633 Third Avenue, 33rd Floor
New York, NY 10017
(212) 803-2414

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

- E. Bidders and contractors that want to be informed by e-mail of future contracting opportunities that may be of interest to them that are advertised in the New York State Contract Reporter, may sign up for a free account by going to <https://www.nyscr.ny.gov/contracts.cfm>
- F. Bidders and contractors that want to sign up, at no charge, to be included in the New York State Business Registry, which may be used by various New York State public agencies and by prime contractors who may contact the Contractor's business directly about subcontracting opportunities, may go to <https://www.nyscr.ny.gov/register.cfm>. Requests for listing in this registry may be made by:
 - i) a New York State Business Enterprise that is not currently listed in this registry; and
 - ii) a business in any other state or country provided the state or country in which the company is located does not engage in discriminatory purchasing practices. These discriminatory jurisdictions are identified within the Business Registry application.
- G. Bidder acknowledges that New York State may seek to obtain offset credits from foreign countries as a result of a Contract of \$1,000,000 or more and agrees to cooperate with the State in these efforts, including but not limited to, executing any and all documents deemed by the State to be necessary or desirable to effectuate such assignment or transfer, and using their best efforts to obtain recognition and accession to such assignment or transfer by any applicable foreign government.
- H. Bidders are hereby notified that state agencies and authorities are prohibited from entering into contracts with businesses whose principal place of business is located in a discriminatory jurisdiction. "Discriminatory jurisdiction" is defined as any other country, nation, province, state or political subdivision which employs a preference or price-distorting mechanism to the detriment of, or otherwise discriminates against, a New York State Business Enterprise in the procurement of commodities and services by the same or a non-governmental entity influenced by the same. A list of discriminatory jurisdictions is maintained by the Commissioner of the NYS Department of Economic Development.

26. RECYCLED PRODUCTS

Pursuant to Section 2878-a of the Public Authorities Law, all purchases of printing on recycled paper shall contain the official New York State recycling emblem established pursuant to subdivision two of Section 27-0717 of the New York State Environmental Conservation Law and Regulations, if such paper

INFORMATION FOR BIDDERS

has been approved by the Department of Environmental Conservation as satisfying the requirements of such statute and regulations; or if such paper has not been approved, the printed material is to include a printed statement which indicates the percentage of pre-consumer recycled material content of the paper.

27. QUALIFIED PRODUCTS LIST

- A. Please be advised that the Authority maintains a Qualified Products List (“QPL”).
- B. If the Bid Solicitation Package specifies that an item is on the Authority’s QPL, then only the specified item will be considered for an award. The QPL is a list of brand products which have been evaluated and pre-qualified for reasons of standardization on the basis of test and/or past performance data, prior to receipt of bids. The purpose of the QPL is to expedite the procurement process while maintaining a high quality of goods by directing awards to manufacturers or suppliers of pre-qualified products only.
- C. Under no circumstances will an equivalent or an “or equal” will be considered for a QPL award. Bids which offer an equivalent will be considered **non-responsive**.
- D. The Authority shall be the sole judge of acceptability of products offered for QPL qualification. Vendors seeking qualification are obligated to furnish all data and information as the Authority may deem necessary to establish the item on QPL. The submission of non-returnable samples may be required to enable the Authority to evaluate the viability of the item within the transit system. All costs associated with the qualification of candidate QPL items shall be borne by the requestor.
- E. Copies of the QPL and a description of general qualifying procedures are accessible at the NYC Transit Materiel Department E-Bids System located at <http://enterprise.mtanyct.info/ebidsvendor/>. Vendors may also write to the NYC Transit QPL Committee Chair, 2 Broadway, Room B18.52, New York, NY 10004.

28. QUALIFICATION OF CHEMICAL PRODUCTS

- A. If the Bid Quotation Sheet identifies an item as a chemical commodity (generally those covered by commodity class numbers with the prefix 62-, 69-, 70-, 71-, and 72-), bidders seeking qualification of an “or equal” may apply for same by complying with these procedures:
- B. If the chemical commodity being offered by the Bidder is not currently listed as a pre-approved product by the Authority, and the item solicited is not listed on the Authority’s QPL, the Bidder is required to submit the following information either with their quotation, or within three (3) business days of notification by the Procurement Representative, in order to be considered:
 - 1. the required documentation specified in **SCHEDULE I, SUPPLYING HAZARDOUS SUBSTANCES**;
 - 2. direct technical and performance comparisons between the Bidder’s product and the pre-approved material or specification currently used by the Authority;

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3. submission of proof which illustrates that the Bidder's product complies and adheres to the appropriate industry standards, including, but not limited to, ASTM, MIL, Federal, SAE, other industrial rules and regulations, and any current regulatory requirements for this material;
4. "Accredited Independent Laboratory" analysis reports on the Bidder's proposed product;
5. a Safety Data Sheet which conforms to the U.S. Occupational Safety and Health Administration requirements (see **SCHEDULE I, SUPPLYING HAZARDOUS SUBSTANCES**) containing chemical and physical properties and comprehensive instructions for use and any other required information;
6. a copy of the manufacturer's Quality Assurance Program and Quality Assurance Manual; and
7. contact names and telephone numbers of other municipalities with transit fleets and other organizations that utilize the Bidder's proposed product.

All seven (7) evaluation criteria must be identified by the Bidder by numbering all seven (7) points on the Bidder's submitted documentation. Failure to provide the required documentation in the time frame specified above will render the Bidder non-responsive and not eligible for award.

- C. At the discretion of the Authority, bidders seeking qualification of an "or equal" may also be required to:
1. supply the necessary samples and/or personnel to perform a patch test at the User Department's request;
 2. supply the necessary samples to Testing and Analysis, Vendor Performance, Materiel, to perform a chemical analysis, and for the Office of System Safety to perform a Product Safety Review; and
 3. consent to inspection and evaluation of manufacturer's facilities and technical staff by the Authority's personnel.
- D. If the item solicited is listed on the QPL, see **PARAGRAPH 27**.

29. ASBESTOS CONTENT

- A. It is the policy of the New York City Transit Authority not to use spare parts, assemblies or equipment that have measurable asbestos content.
- B. Any goods or materials received by the Authority that are suspected of containing asbestos will be held pending analysis by Testing and Analysis, Vendor Performance, Materiel. If the suspect goods or materials are found to contain asbestos, they will be rejected.

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- C. In some applications, asbestos may be the only material for the intended purpose. In such case, the Bidders must note this on the Bid Quotation Sheet.
- D. Any goods or materials shipped containing asbestos must be accompanied by a material certification from an independent testing laboratory specifying the type and concentration of asbestos fibers. This certification must contain a clear, concise statement regarding the “asbestos” content of the subject goods or materials. If any doubt exists regarding the details of the certification, the goods or materials will be rejected.
- E. In addition, a Safety Data Sheet which conforms to the U.S. Occupational Safety and Health Administration requirements (see **SCHEDULE I, SUPPLYING HAZARDOUS SUBSTANCES**) must be supplied with any Bid.

30. METROPOLITAN TRANSPORTATION AUTHORITY VENDOR CODE OF ETHICS

Bidder’s Certification of Compliance with the MTA Vendor Code of Ethics (“the Code”): All Vendors, as defined by the Code, involved in this Solicitation and during the performance of any resultant contract are subject to the Code, which is available for Bidder’s immediate review in the Bid Solicitation Package and on the MTA website at http://web.mta.info/mta/compliance/pdf/Vendor_Code_of_Ethics.pdf. Accordingly, all Bidders must certify compliance with the Code in the Bid which includes the Certification of Compliance with the MTA Vendor Code of Ethics.

[END OF SECTION]