

FORMER AL-TECH SPECIALTY STEEL ON-SITE STRUCTURES (OU3) REMEDIAL ACTION

Town of Colonie, Albany County, New York
Inactive Hazardous Waste Site Number 401003

AUGUST 2020

ADDENDUM No. 1

TO CONTRACT D011842



**Department of
Environmental
Conservation**

Prepared by:

**New York State Department of Environmental Conservation Division
of Environmental Remediation**

and

AECOM USA, Inc.



**PRE-BID CONFERENCE
WEDNESDAY AUGUST 19, 2020 09:00 & 13:00
REMEDIAL CONSTRUCTION AT THE
AL TECH SPECIALTY STEEL SITE
CONTRACT NO. D011842**

ANNOUNCEMENTS:

1. A "silent" review of the site will take place on **Thursday, August 27th, 2020 from 10:00 AM until 2:00 PM**. The Department will not receive questions or provide responses during this event. This is strictly an opportunity for those who attended the Pre-Bid meeting to more thoroughly review the project site. **Pre-registration for this site review is required; please email benjamin.rung@dec.ny.gov to attend.**
2. Written questions will be received by the Department until the close of business on **Friday, September 4th, 2020**. Responses to written questions will be provided in Addendum No. 2 on or about **Wednesday, September 9th, 2020**.

MEETING MINUTES:

A. OPENING REMARKS

The agenda for this mandatory pre-bid meeting is as follows:

Introductions;
General Site Information;
Overview of Contract Administrative Requirements;
Overview of Site-specific details and Specifications
Site Review
Questions & Answers

B. MANDATORY SIGN-IN

All attendees intending to bid **MUST SIGN** the attendance sheet. Attendance at the pre-bid conference is a condition of bidding.

Attendees of this pre-bid conference will receive the sign-in sheet and meeting minutes in Addendum No. 1, **Attachment A**.

C. BID ACCEPTANCE AND OPENING

Bid Opening will be Tuesday, September 15, 2020 at 11:00 (EST)

USE the BID ENVELOPE provided today (address included on bid envelopes). Contact DEC PM if envelope is needed following the on-site meeting.

There will be a guided tour of the entire site, followed by an opportunity to view the site independently.

D. PROJECT CONTACTS

1. New York State Department of Environmental Conservation (DEPARTMENT)

Project contacts:

Benjamin Rung, P.E., Project Manager
Designated Contract Contact
Tel: (518) 402-9826
Email: benjamin.rung@dec.ny.gov

Michael Cruden, P.E., Director, Remedial Bureau E
Individual to Hear Disputes
Tel: (518) 402-9813
Email: michael.cruden@dec.ny.gov

2. Remedial Design/Project ENGINEER: AECOM USA, Inc.

Michael Gutmann, P.G., Project Manager
Randolph West, P.E., Project Engineer
AECOM USA, Inc.
257 West Genesee St., Suite 400
Buffalo, NY 14202

E. BID DOCUMENTS AND PROPOSALS

1. The DEPARTMENT has gone to a paperless/electronic bid document procurement process. There is no cost for electronic copies of the contract documents available on NYSDEC web site. Parties interested in stamped, "biddable", Contract Documents and Drawings should visit the FTP link below. Paper copies of Contract Documents are available.

- Informational Public Site (Non-Biddable):
<http://www.dec.ny.gov/chemical/59233.html>
- FTP Site (Biddable):
<ftp://ftp.dec.ny.gov/der/AL%20Tech%20Specialty%20Steel%20Corp/>

2. Proposals will be accepted only from bidders who attended the Pre-Bid Conference held on Wednesday, August 19, 2020, and signed the Pre-Bid Meeting Attendance Sheet(s) provided by the DEPARTMENT. ATTENDANCE IS MANDATORY AS A CONDITION OF BIDDING.

All proposals must be made on the forms contained in Contract Documents and enclosed in the bid envelope, which was made available at the pre-bid meeting presentation, or, mailed by the DEPARTMENT to the Pre-Bid Attendees that subsequently request an envelope. Each proposal must be accompanied by a deposit or a bid bond in the amount of five percent (5%) of the total bid amount.

3. Contract Documents include technical specifications and drawings.
4. Bidders may receive announcements of future procurement opportunities by signing up for the DEPARTMENT – DER's electronic mailing list (GovDelivery) at: <https://public.govdelivery.com/accounts/NYSDEC/subscriber/new>. Also refer to advertisement page in contract, Section I of Contract Documents for web address.
5. The CONTRACTOR shall implement green remediation practices in the

performance of the requirements of the Work to maximize to the extent practicable, sustainability, reduce energy and water usage, promote carbon neutrality, promote industrial materials reuse and recycling, and protect and preserve land resources.

6. Bids will be publicly opened and read aloud at 11:00 AM (EST) on Tuesday September 15, 2020. In order to be considered responsive, bids must be received prior to this time and date. Telegraphic or other electronically transferred bids are not acceptable.

Potential bidders are welcome to attend the bid opening in person. Those bidders wishing to attend, or hand deliver their bid, are requested to contact DEPARTMENT Project Manager Ben Rung ahead of time to facilitate building security protocols. If not pre-registered, building admittance may be delayed or barred.

7. A general summary of site conditions and a summary of data from Remedial Design Investigations is included within the Limited Site Data Document (LSDD); electronically provided on the FTP site along with the stamped Contract Documents.
8. The August 2020 Contract Documents were prepared by the DEPARTMENT and AECOM. AECOM was contracted to complete the remedial design as project ENGINEER and has been awarded responsibilities of ENGINEER to perform construction management and daily oversight/inspection responsibilities during remediation.
9. There will be no approval(s) given during the bidding period or prior to award of the contract for any "or-equal" or substitution equipment, systems, or items. **BID AS SPECIFIED.**

- F. Bidders with questions relating to the M/WBE and SDVOB requirements of the Contract are directed to contact Mr. Jamie Thompson, M/WBE | SDVOB Compliance Specialist, at jamie.thompson@dec.ny.gov (minimum requirements discussed under Item S below).
- G. Potential bidders should direct their technical questions to Benjamin Rung in writing by e-mail at benjamin.rung@dec.ny.gov. Written question will be received by the DEPARTMENT until close of business on Friday, September 4, 2020. Responses to questions received will be provided in Addendum No. 2 on or about Wednesday, September 9, 2020.
- H. A minimum of three (3) years experience in the construction of the items bid is required of the CONTRACTOR. Statement of Experience along with past projects, contacts, references, etc., will be required of the Apparent Low Bidder. The DEPARTMENT reserves the right to request additional experience information based upon complexity of project.
- I. Addendum No. 1 will include meeting minutes, pre-bid meeting attendance list, significant questions raised and responses resulting from pre-bid meeting, and any changes to the August 2020 Contract Documents. Comments will only be accepted in writing; sent to the DEPARTMENT's attention, see paragraph 'G' above.

J. Further information about the site can be found at the following locations (by appointment only):

1. DEPARTMENT OF ENVIRONMENTAL CONSERVATION,
625 Broadway, 12th Floor
Albany, NY 12233
Attn. Benjamin Rung, P.E., (518) 402-9826.

K. Prevailing Wage Rates (Section XIII of contract documents)

1. The DEPARTMENT requires, for the work under this contract, that the CONTRACTOR and its sub-CONTRACTOR's pay at least the prevailing wage rate and pay or provide the prevailing supplements, including premium rates for overtime pay, as issued by the State Labor Department. The current wage rates are included as Section XIII within the contract documents. CONTRACTOR that willfully fails to file payroll records to the DEPARTMENT shall be guilty of a class E felony and subject to civil penalty of up to \$1,000/day.
2. CONTRACTOR is responsible to update wage rate schedule throughout the duration of the contract. The CONTRACTOR is also required to submit certified payrolls and sub-CONTRACTOR certified payrolls within 30 days after issuance of its first payroll and every thirty days thereafter for review and acceptance by the ENGINEER. Payrolls must be maintained for at least three (3) years from the projects date of completion. Filing of payrolls to the DEPARTMENT is one condition of payment.

L. General Scope of Work: CONTRACTOR shall refer to contract documents for detailed scope of work required.

1. Major remedial activities at the AL Tech Specialty Steel site generally include, but are not necessarily limited to:
 - a) Mobilization/demobilization.
 - b) Demolition and off-site disposal of the remnants of seven structures, and removal and off-site disposal of solid waste associated with, and surrounding said structures.
 - c) The derelict structures contain lead and asbestos, therefore, demolition must be performed in the manner required by applicable laws and regulations.

The Site has a long history of stainless-steel production. Various process operations occurred throughout the facility. Contaminants of Concern at the Site generally are related to metal fabrication processes and electrical transformer equipment. Metals (chromium, lead, nickel, mercury, selenium, and copper), polychlorinated biphenyls (PCBs), asbestos containing materials (ACM), and some petroleum products have been identified in various site media. Other organic compounds are present at a lesser frequency. Technically enhanced naturally occurring radiologic materials (TENORM) are also present in some of the buildings in the form of primarily ceramics and firebrick. AECOM's Health Physicist will provide radiation monitoring during demolition work in areas with TENORM. The Contractor is responsible for dosimeter monitoring and testing

as specified in the Contract Documents. Listed hazardous waste types include K061 and K062. Characteristic hazardous wastes identified include D006, D007, D008, D009, and D010. TSCA PCB wastes are also present. Paint is contaminated with lead and in some areas with PCBs. Quantities of the various contaminated and non-contaminated media and materials have been measured and estimated and are included in the Contract Documents for the demolition project. Refer to the Limited Site Data Document for additional detailed information regarding the nature of the wastes and previous demolition work completed in 2001-2003 at the former Melt Shop Complex.

2. Additional Notes:

Waste water from pits, vaults, decontamination, etc. will be treated through a treatment system constructed utilizing the existing concrete API separator basins and as specified in the Contract Documents. Discharge after treatment will be through an existing outfall to Kromma Kill. The SPDES Permit is already approved by NYSDEC. Additional required permits are listed in the Contract Documents and include but are not limited to: Demolition; Asbestos Variance; and Hydrant/Water Use.

3. The estimated range for this work is between \$15 Million and \$20 Million. CONTRACTORS are required to refer to contract documents for a complete list of work items specified under this contract.

M. Bid Instructions:

1. Bid instructions are summarized in Section III of the Contract Documents. In all instances, the DEPARTMENT reminds Bidders to fill all forms completely and make endorsements where indicated. Incomplete bid forms may be rejected.
2. For the bid submission, each bidder needs to submit the following - Section III, Article 5(a):
 - a) Form of Bid (completed and endorsed);
 - b) Bid Bond or Certified Check equal to five percent (5%) of the bid amount;
 - c) Offerer Disclosure of Prior Non-Responsibility Determinations
 - d) Vendor Assurance of No Conflict of Interest or Detrimental Effect
 - e) In the case of a legally constituted joint venture, the Bidders must submit a copy of the written joint venture agreement with their Bid;
 - f) Sexual Harassment Awareness Training Program
3. Bids must be submitted using the appropriate envelope (provided to potential bidders during meeting), or mailed to the pre-bid meeting attendees upon request. Completed bids must be sent using bid envelope provided at the pre-bid meeting and addressed to:

N. Notice of Apparent Low Bidder, Section III, Article 5(b)

1. After administratively processing the bid opening, the DEPARTMENT will issue a Notice of Apparent Low Bid via email and by certified letter. The

apparent low bidder will then be required to submit the items included in Section III, Article 5(b) to the DEPARTMENT within five (5) calendar days:

O. Contract Award - Section III, Article 5(c)

1. Following DEPARTMENT and ENGINEER review and approval of the apparent low bidder's five-day submittals, a letter of Intent to Award will be issued by the DEPARTMENT to the apparent CONTRACTOR. The low responsible bidder selected will have 14 calendar days to submit items included in Section III, Article 5(c).
2. Following DEPARTMENT and ENGINEER review and approval of the apparent low bidder's 14-day submissions, the Contract must be routed through the DEPARTMENT, Department of Law, and the Office of the State Comptroller. Contract award may take three to five months. Time for award is partially dependent on how well CONTRACTOR completes submittal process following bid opening.

P. Miscellaneous:

1. The DEPARTMENT is exempt from sales and compensating use taxes for all materials, equipment, and supplies. CONTRACTOR is responsible for contacting NYS Department of Taxation and Finance to secure tax-exempt status for this project, the DEPARTMENT does not facilitate this. DEPARTMENT will provide CONTRACTOR with letter from NYS DOL verifying the exemption.
2. As per the contract, subcontracting is limited to forty percent (40%) on this project. (Does not include transportation and disposal).
3. Insurances - (MUST BE CURRENTLY NYS LICENSED). Include endorsement(s) with policy number(s). Bidders should contact Mr. Andrew Lindberg at andrew.lindberg@dec.ny.gov with questions related to Insurance requirements.
4. During contract work all documents and data are to be submitted in electronic format to the ENGINEER and DEPARTMENT. The ENGINEER/DEPARTMENT will not approve a final report or make final payment unless, and until, all documents and data generated in support of that report have been submitted in accordance with the electronic submission protocols.

Information on the format of environmental data submissions can be found at: <http://www.dec.ny.gov/chemical/62440.html>.

Information on document submissions can be found at: <http://www.dec.ny.gov/regulations/2586.html>.

Q. Contract Time:

1. Effective date of Agreement is date contract executed by New York State Office of the State Comptroller.

- a. The Work will be Substantially Completed within five-hundred and sixty-seven (567) days from the Effective Date of the Agreement plus twenty (20) calendar days.
- b. The Work will be completed and ready for final payment in accordance with the General Conditions within five-hundred and ninety-seven (597) days from the Effective Date of the Agreement plus twenty (20) calendar days; or within 60 days of substantial completion, whichever is sooner.

R. Past Problems Experienced with Bids:

1. Received late bids, after the 11:00 AM deadline. Late bids will be returned unopened. If delivering in person on day of bid opening, Proposer must contact Benjamin Rung in advance to arrange access to the building.
2. Bidders have put conditions on the bid. Conditioned bids will be rejected.
3. The forms provided within the Contract Documents were not used or missing. Use only forms contained in Contract Documents.
4. Math and/or clerical errors (Please check all math!).
5. Bids sent to incorrect address. Used only the pre-addressed envelopes provided by the DEPARTMENT.
6. Bidders have marked up or attempted to change language within bonds and insurance certificates included within contract. This is not acceptable, and bidder may be considered unresponsive.
7. Insurance certificates/policies/endorsements must be current.
8. Not all required forms submitted/signed.
9. Forms were not filled out in their entirety. Be sure to fill out both spaces for "Words" and numerical bid amounts for each bid item.
10. Do not send bids to the attention of Benjamin Rung, Project Manager/Designated Contact.
11. DEPARTMENT is not responsible for late delivery of overnight express delivery services. If received after 11:00 AM EST on the bid date of Tuesday, September 15, 2020 they will be returned to bidder unopened.

S. M/WBE, SDVOB & EEO Requirements (see Section VII, Appendix B)

Appendix B has been updated and is appended to this Addendum No. 1. Bidders are hereby directed to replace the Appendix B contained in the August 2020 Contract Documents with the document attached hereto as Attachment B.

1. The selected bidder must make good faith efforts to subcontract at least thirty percent (30%) minority and women's business enterprises.

2. The selected bidder must make a good faith effort to subcontract at least six percent (6%) Service-Disabled Veteran-Owned Business enterprises.
3. The selected bidder agrees to make good faith efforts to employ minorities and women for at least ten percent and ten percent, respectively, for each of the work force hours needed for completion of the project.
4. The NYS Directory of certified M/WBE is available on the internet at: <http://www.empire.state.ny.us>. NYS Department of Economic Development (DED) can also be contacted by phone at (518) 474-1979.
5. The apparent low bidder must send the M/WBE Utilization Plan to Mr. Jamie Thompson, (518) 402-9252, Bureau of Minority and Women's Business Programs at the DEPARTMENT Albany office. Appropriate phone and fax numbers have been specified within the Contract Documents in Section III. Electronic PDF forms available on the Department web site at <http://www.dec.ny.gov/about/48854.html>.
6. Good faith efforts shall include: Advertisement for services in the local minority or women-owned business newspapers. Providing adequate time for M/WBE firms to respond to bids. Provisions for realistic time and delivery schedules for bidders.
7. CONTRACTOR will be required to complete M/WBE-SDVOB-EEO quarterly reports outlining their utilization.

T. Questions Regarding Bid Documents:

Technical questions which arise after the question and answer period at the pre-bid meeting are to be directed to Benjamin Rung at the DEPARTMENT. Addendum No. 2, answers to written questions, are currently anticipated to be electronically issued on or about Wednesday, September 9, 2020 via the DEPARTMENT's public web site and FTP site. Schedule for release is subject to change. No hard copies will be delivered.

Note: E-mail questions will be acceptable. Questions shall be accepted from CONTRACTORS/Potential Bidders until 5:00 PM (EST), Friday, September 4, 2020.

U. Known Primary Changes to Contract Documents:

No known changes to the Contract Specifications or Drawings have been identified. Appendix B has been updated and is included in this Addendum.

At this time, it does not appear that the **September 15, 2020** bid opening date will be extended.

V. The pre-bid meeting ended following the presentation a site tour and question and answer session.

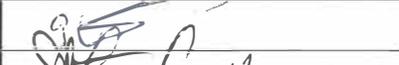
W. Attached are substantive questions, received in writing prior to, and verbally at the Wednesday, August 19, 2020 pre-bid meeting; and the DEPARTMENT's responses. **(Attachment C)**.

END OF MEETING MINUTES

ATTACHMENT A

Signature Sheets

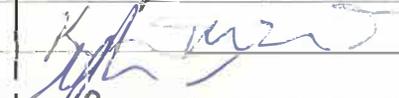
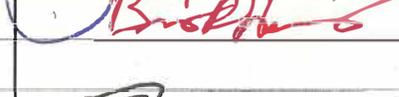
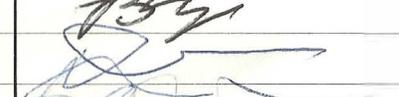
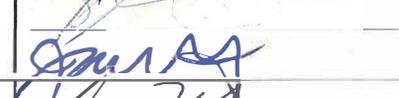
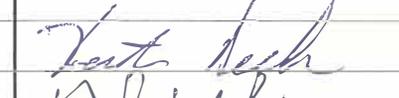
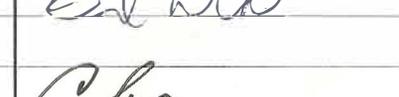
AL Tech Specialty Steel - OU3 Site Structure
 Site No. 401003 | Contract No. D011842
 Pre-Bid Conference - August 19, 2020 - 9:00 AM

Firm	Name	Email	Signature
Atlantic Testing	Philip Morrissey	pmorrissey@atlantictesting.com	
Austin Master Services	Scott Bement	sbement@austinmasterservices.com	
Austin Master Services	Jack Bement	jbement@austinmasterservices.com	
Clean Harbors	David McCarley	mccarley.david@cleanharbors.com	
Clean Harbors	John Goodno	goodno.john@cleanharbors.com	
Dans Hauling and Demo	Daniel Wolfe	demodan@danshauling.com	
Dans Hauling and Demo	Michael Ames	heather@danshauling.com	
Genesee Environmental	Sean Miller	smiller@gen-env.com	
Gorick Construction	Andrew Tiffit	andy@gorickconstruction.com	
Gramercy USA	Richard Peterson	rpeterson@gramercyusa.com	
Gramercy USA	Anthony Vicciardo	ajvicciardo@gramercyusa.com	
Heritage Environmental	Steve Cross	steve.cross@heritage-environmental.com	
HRP	Thomas Seguljic	tom.seguljic@hrpassociates.com	
HRP	Stefan Truex	stefen.truex@hrpassociates.com	
Jackson Demolition	Mike Martin	mmartin@jacksondemolition.com	
Jackson Demolition	Josh Frederick	jfrederick@jacksondemolition.com	
NRC	Chris Kirgan	ckirgan@nrcc.com ckirgan@nrcc.com	
NRC	Ken Bracken	kbracken@nrcc.com kbracken@nrcc.com	
Safety Clean	Matthew Seymour	seymour.matthew@cleanharbors.com	
Sessler Environmental Servises	Mike Loucks	mloucks@sesslerenv.com	
Sessler Environmental Servises	Eric Hoban	ehoban@sesslerenv.com	
Sessler Wrecking	Jeff Sessler	jeff@sesslerwrecking.com	
Sessler Wrecking	Chadd General	cgeneral@sesslerwrecking.com	
Two Brothers Contracting, Inc.	Joe Timian	joe@tbcdemo.com	
Two Brothers Contracting, Inc.	Ken Timian	ken@tbcdemo.com	
US Ecology	Thomas Reed	thomas.reed@usecology.com	

AL Tech Specialty Steel - OU3 Site Structure
 Site No. 401003 | Contract No. D011842
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Firm	Name	Email	Signature
Atlantic Testing	Philip Morrissey	pmorrissey@atlantictesting.com	
Austin Master Services	Scott Bement	sbement@austinmasterservices.com	
Austin Master Services	Jack Bement	jbement@austinmasterservices.com	
Clean Harbors	David McCarley	mccarley.david@cleanharbors.com	
Clean Harbors	John Goodno	goodno.john@cleanharbors.com	
Dans Hauling and Demo	Daniel Wolfe	demodan@danshauling.com	
Dans Hauling and Demo	Michael Ames	heather@danshauling.com	
Genesee Environmental	Sean Miller	smiller@gen-env.com	
Gorick Construction	Andrew Tiffit	andy@gorickconstruction.com	
Gramercy USA	Richard Peterson	rpeterson@gramercyusa.com	
Gramercy USA	Anthony Vicciardo	ajvicciardo@gramercyusa.com	
Heritage Environmental	Steve Cross	steve.cross@heritage-environmental	
HRP	Thomas Seguljic	tom.seguljic@hrpassociates.com	
HRP	Stefan Truex	stefen.truex@hrpassociates.com	
Jackson Demolition	Mike Martin	mmartin@jacksondemolition.com	
Jackson Demolition	Josh Frederick	jfrederick@jacksondemolition.com	
NRC	Chris Kirgan	ckirgin@nrcc.com	
NRC	Ken Bracken	kbracken@nrcc.com	
Safety Clean	Matthew Seymour	seymour.matthew@cleanharbors.com	
Sessler Environmental Servises	Mike Loucks	mloucks@sesslerenv.com	
Sessler Environmental Servises	Eric Hoban	ehoban@sesslerenv.com	
Sessler Wrecking	Jeff Sessler	jeff@sesslerwrecking.com	
Sessler Wrecking	Chadd General	cgeneral@sesslerwrecking.com	
Two Brothers Contracting, Inc.	Joe Timian	joe@tbcdemo.com	
Two Brothers Contracting, Inc.	Ken Timian	ken@tbcdemo.com	
US Ecology	Thomas Reed	thomas.reed@usecology.com	

AL Tech Specialty Steel - OU3 Site Structures
 Site No. 401003 | Contract No. D011842
 Pre-Bid Conference - August 19, 2020 - 13:00 PM

Firm	Name	Email	Signature
Aztech Environmental	Matthew Ryan	mryan@aztechenv.com	
Aztech Environmental	Fil Fina	ffina3@aztechenv.com	
Chazen Companies	Kevin McGrath	kmcgrath@chazencompanies.com	
Classic Environmental	Michael Jenkins	mjenkins@classicenvironmental.com	
Classic Environmental	Greg Streeter	gstreeter@classicenvironmental.com	
Con-Test Analytical Labs.	Aaron Benoit	aaron.benoit@contestlabs.com	
DA Collins Env Services	David MacDougall	dmacdougall@dacollins.com	
EnviroTrac Ltd.	Frank Kehoe	fkehoe@envirotrac.com	
ESG	Brian Harris	bharris@esgenv.com	
ESG	Laterio Humphrey	lhumphrey@esgenv.com	
Guardian Environmentla Services	Brian MacKenzie	bmackenzie@gesoncall.com	
High Ground Industrial	Jeff Hoffmand	jeffh@highgroundind.com	
High Ground Industrial	2nd Party TBD	DL Daveh@highgroundind.com	
Integrated Demo and Remediation	Joe Vendetti	joe@idrdemo.com	
Island Pump and Tank	Jess Hicks	jessh@islandpumpandtank.com	
James H. Maloy, Inc.	Tom McClain	tmcclain@jhmalo.com	
Kubricky Construction	Volker Burkowski	vburkowski@dacollins.com	
Land Remediation	Keith Decker	kad@land-remediation.com	
NW Contracting	Daniel Wik	dwik@nwcontracting.com	
Preferred Environmental Services	Jill Haimson	jhaimson@preferredenv.com	
Rifenburg Contracting Corp.	Chuck Riccardi	criccardi@riftenburg.net	
Sabre Demolition	Matt Dixon	mdixon@sabredemolition.com	
Sabre Demolition	Steven McGee	smcgee@sabredemolition.com	

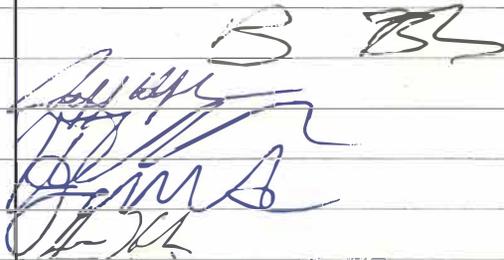
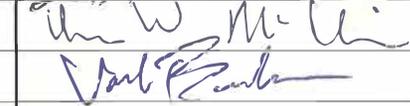
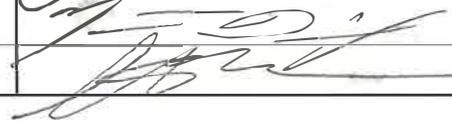
Island Pump + Tank

Rob Network

Robert@IslandPumpandTank.com



AL Tech Specialty Steel - OU3 Site Structures
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Firm	Name	Email	Signature
Aztech Environmental	Matthew Ryan	mryan@aztechenv.com	
Aztech Environmental	Fil Fina	ffina3@aztechenv.com	
Chazen Companies	Kevin McGrath	kmcgrath@chazencompanies.com	
Classic Environmental	Michael Jenkins	mjenkins@classicenvironmental.com	
Classic Environmental	Greg Streeter	gstreeter@classicenvironmental.com	
Con-Test Analytical Labs.	Aaron Benoit	aaron.benoit@contestlabs.com	
DA Collins Env Services	David MacDougall	dmacdougall@dacollins.com	
EnviroTrac Ltd.	Frank Kehoe	fkehoe@envirotrac.com	
ESG	Brian Harris	bharris@esgenv.com	
ESG	Laterio Humphrey	lhumphrey@esgenv.com	
Guardian Environmentla Services	Brian MacKenzie	bmackenzie@gesoncall.com	
High Ground Industrial	Jeff Hoffmand	jeffh@highgroundind.com	
High Ground Industrial	2nd Party TBD	Dave@Highgroundind.com	
Integrated Demo and Remediation	Joe Vendetti	joe@idrdemo.com	
Island Pump and Tank	Jess Hicks	jessh@islandpumpandtank.com	
James H. Maloy, Inc.	Tom McClain	tmcclain@jhmaly.com	
Kubricky Construction	Volker Burkowski	vburkowski@dacollins.com	
Land Remediation	Keith Decker	kad@land-remediation.com	
NW Contracting	Daniel Wik	dwik@nwcontracting.com	
Preferred Environmental Services	Jill Haimson	jhaimson@preferredenv.com	
Rifenburg Contracting Corp.	Chuck Riccardi	criccardi@riftenburg.net	
Sabre Demolition	Matt Dixon	mdixon@sabredemolition.com	
Sabre Demolition	Steven McGee	smcgee@sabredemolition.com	

ATTACHMENT B
Updated Appendix B

APPENDIX B

Standard Clauses for All New York State Department of Environmental Conservation Contracts

The parties to the attached contract, license, lease, grant, 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 to the contract, other than the New York State Department of Environmental Conservation (hereinafter "Department").

I. **Postponement, suspension, abandonment or termination by the Department:**

The Department shall have the right to postpone, suspend, abandon or terminate this contract, and such actions shall in no event be deemed a breach of contract. In the event of any termination, postponement, delay, suspension or abandonment, the Contractor shall immediately stop work, take steps to incur no additional obligations, and to limit further expenditures. Within 15 days of receipt of notice, the Contractor shall deliver to the Department all data, reports, plans, or other documentation related to the performance of this contract, including but not limited to source codes and specifications, guarantees, warranties, as-built plans and shop drawings. In any of these events, the Department shall make settlement with the Contractor upon an equitable basis as determined by the Department which shall fix the value of the work which was performed by the Contractor prior to the postponement, suspension, abandonment or termination of this contract. This clause shall not apply to this contract if the contract contains other provisions applicable to postponement, suspension or termination of the contract.

II. **Indemnification and Hold harmless** The Contractor agrees that it will indemnify and save harmless the Department and the State of New York from and against all losses from claims, demands, payments, suits, actions, recoveries and judgments of every nature and description brought or recovered against it by reason of any omission or tortious act of the Contractor, its agents, employees, suppliers or subcontractors in the performance of this contract. The Department and the State of New York may retain such monies from the amount due Contractor as may be necessary to satisfy any claim for damages, costs and the like, which is asserted against the Department and/or the State of New York.

III. **Conflict of Interest**

(a) Organizational Conflict of Interest. To the best of the Contractor's knowledge and belief, the Contractor warrants that there are no relevant facts or circumstances which could give rise to an organizational conflict of interest, as herein defined, or that the Contractor has disclosed all such relevant information to the Department.

(1) An organizational conflict of interest exists when the nature of the work to be performed under this contract may,

without some restriction on future activities, impair or appear to impair the Contractor's objectivity in performing the work for the Department.

(2) The Contractor agrees that if an actual, or potential organizational conflict of interest is discovered at any time after award, whether before or during performance, the Contractor will immediately make a full disclosure in writing to the Department. This disclosure shall include a description of actions which the Contractor has taken or proposes to take, after consultation with the Department, to avoid, mitigate, or minimize the actual or potential conflict.

(3) To the extent that the work under this contract requires access to personal, proprietary or confidential business or financial data of persons or other companies, and as long as such data remains proprietary or confidential, the Contractor shall protect such data from unauthorized use and disclosure and agrees not to use it to compete with such companies.

(b) Personal Conflict of Interest: The following provisions with regard to management or professional level employee personnel performing under this contract shall apply until the earlier of the termination date of the affected employee(s) or the duration of the contract.

(1) A personal conflict of interest is defined as a relationship of an employee, subcontractor employee, or consultant with an entity that may impair or appear to impair the objectivity of the employee, subcontractor employee, or consultant in performing the contract work. The Contractor agrees to notify the Department immediately of any actual or potential personal conflict of interest with regard to any such person working on or having access to information regarding this contract, as soon as Contractor becomes aware of such conflict. The Department will notify the Contractor of the appropriate action to be taken.

(2) The Contractor agrees to advise all management or professional level employees involved in the work of this contract, that they must report any personal conflicts of interest to the Contractor. The Contractor must then advise the Department which will advise the Contractor of the appropriate action to be taken.

(3) Unless waived by the Department, the Contractor shall certify annually that, to the best of the Contractor's knowledge and belief, all actual, apparent or potential conflicts of interest, both personal and organizational, as defined herein, have been reported to the Department. Such certification must be signed by a senior executive of the Contractor and submitted in accordance with instructions provided by the Department. Along with the annual certification, the Contractor shall also submit an update of any changes in any conflict of interest plan submitted with its proposal for this contract. The initial certification shall cover the one-year period from the date of contract award, and all subsequent certifications shall cover successive annual periods thereafter. The certification is to be submitted no later than 45 days after the close of the previous certification period covered.

(4) In performing this contract, the Contractor recognizes that its employees may have access to data, either provided by the Department or first generated during contract performance, of a sensitive nature which should not be released without Department approval. If this situation occurs, the Contractor agrees to obtain confidentiality agreements from all affected employees working on requirements under this contract including subcontractors and consultants. Such agreements shall contain provisions which stipulate that each employee agrees not to disclose, either in whole or in part, to any entity external to the Department, Department of Health or the New York State Department of Law, any information or data provided by the Department or first generated by the Contractor under this contract, any site-specific cost information, or any enforcement strategy without first obtaining the written permission of the Department. If a Contractor, through an employee or otherwise, is subpoenaed to testify or produce documents, which could result in such disclosure, the Contractor must provide immediate advance notification to the Department so that the Department can authorize such disclosure or have the opportunity to take action to prevent such disclosure. Such agreements shall be effective for the life of the contract and for a period of five (5) years after completion of the contract.

(c) Remedies - The Department may terminate this contract in whole or in part, if it deems such termination necessary to avoid an organizational or personal conflict of interest, or an unauthorized disclosure of information. If the Contractor fails to make required disclosures or misrepresents relevant information to the Department, the Department may terminate the contract, or pursue such other remedies as may be permitted by the terms of Clause I of this Appendix or other applicable provisions of this contract regarding termination.

(d) The Contractor will be ineligible to make a proposal or bid on a contract for which the Contractor has

developed the statement of work or the solicitation package

(e) The Contractor agrees to insert in each subcontract or consultant agreement placed hereunder (except for subcontracts or consultant agreements for well drilling, fence erecting, plumbing, utility hookups, security guard services, or electrical services) provisions which shall conform substantially to the language of this clause, including this paragraph (e), unless otherwise authorized by the Department.

If this is a contract for work related to action at an inactive hazardous waste site, the following paragraph shall apply to those Contractors whose work requires the application of professional judgment: It does not apply to construction contracts.

(f) Due to the scope and nature of this contract, the Contractor shall observe the following restrictions on future hazardous waste site contracting for the duration of the contract.

(1) The Contractor, during the life of the work assignment and for a period of three (3) years after the completion of the work assignment, agrees not to enter into a contract with or to represent any party with respect to any work relating to remedial activities or work pertaining to a site where the Contractor previously performed work for the Department under this contract without the prior written approval of the Department.

(2) The Contractor agrees in advance that if any bids/proposals are submitted for any work for a third party that would require written approval of the Department prior to entering into a contract because of the restrictions of this clause, then the bids/proposals are submitted at the Contractor's own risk, and no claim shall be made against the Department to recover bid/proposal costs as a direct cost whether the request for authorization to enter into the contract is denied or approved.

IV. Requests for Payment All requests for payment by the Contractor must be submitted on forms supplied and approved by the Department. Each payment request must contain such items of information and supporting documentation as are required by the Department, and shall be all-inclusive for the period of time covered by the payment request.

V. **Compliance with Federal requirements** To the extent that federal funds are provided to the Contractor or used in paying the Contractor under this contract, the Contractor agrees that it will comply with all applicable federal laws and regulations, including but not limited to those laws and regulations under which the Federal funds were authorized. The Contractor further agrees to insert in any subcontract hereunder, provisions which shall conform substantially to the language of this clause.

VI. **Independent Contractor** The Contractor shall have the status of an independent contractor. Accordingly, the Contractor agrees that it will conduct itself in a manner consistent with such status, and that it will neither hold itself out as, nor claim to be, an officer or employee of the Department by reason of this contract. It further agrees that it will not make any claim, demand or application to the Department for any right or privilege applicable to an officer or employee of the Department, including but not limited to worker's compensation coverage, unemployment insurance benefits, social security coverage, or retirement membership or credit.

VII. **Compliance with applicable laws**

(a) Prior to the commencement of any work under this contract, the Contractor is required to meet all legal requirements necessary in the performance of the contract. This includes but is not limited to compliance with all applicable federal, state and local laws and regulations promulgated thereunder. It is the Contractor's responsibility to obtain any necessary permits, or other authorizations. By signing this contract, the Contractor affirmatively represents that it has complied with said laws, unless it advises the Department otherwise, in writing. The Department signs this contract in reliance upon this representation.

(b) During the term of this contract, and any extensions thereof, the Contractor must remain in compliance with said laws. A failure to notify the Department of noncompliance of which the Contractor was or should have been aware, may be considered a material breach of this contract.

VIII. **Dispute Resolution** The parties agree to the following steps, or as many as are necessary to resolve disputes between the Department and the Contractor.

(a) The Contractor specifically agrees to submit, in the first instance, any dispute relating to this contract to the designated individual, who shall render a written decision and furnish a copy thereof to the Contractor.

(1) The Contractor must request such decision in writing no more than fifteen days after it knew or should have known of the facts which are the basis of the dispute.

(2) The decision of the designated individual shall be the final DEC determination, unless the Contractor files a written appeal of that decision with the designated appeal individual ("DAI") within twenty days of receipt of that decision.

(b) Upon receipt of the written appeal, the DAI, will review the record and decision. Following divisional procedures in effect at that time, the DAI will take one of the following actions, with written notice to the Contractor.

- (1) Remand the matter to the program staff for further negotiation or information if it is determined that the matter is not ripe for review; or
- (2) Determine that there is no need for further action, and that the determination of the designated individual is confirmed; or
- (3) Make a determination on the record as it exists.

(c) The decision of the DAI shall be the final DEC decision unless the Contractor files a written appeal of that decision with the Chair of the Contract Review Committee ("CRC") within twenty days of receipt of that decision.

The designated individual to hear disputes is:

Michael Cruden, Director, Remedil Bureau E

(Name and Title)

NYS Dept of Env. Conservation - Env. Remediation
625 Broadway, 12th Floor , Albany NY 12233-7017
(Address)

(518) 402-9813

(Telephone)

The designated appeal individual to review decisions is:

George Heitzman, Asst. Division Director

(Name and Title)

NYS Dept of Env. Conservation - Env. Remediation
625 Broadway, 12th Floor, Albany, NY 12233-7012
(Address)

(518) 402-9706

(Telephone)

The Chair of the Contract Review Committee is:

Department of Environmental Conservation
Nancy W. Lussier Chair
Contract Review Committee
625 Broadway, 10th Floor
Albany, NY 12233-5010
Telephone: (518) 402-9228

(d) Upon receipt of the written appeal, the Chair of the CRC, in consultation with the members of the CRC and the Office of General Counsel, will take one of the following actions, or a combination thereof, with written notice to the Contractor.

(1) Remand the matter to program staff for additional fact finding, negotiation, or other appropriate action; or

(2) Adopt the decision of the DAI; or

(3) Consider the matter for review by the CRC in accordance with its procedures.

(e) Following a decision to proceed pursuant to (d) 3, above, the Chair of the CRC shall convene a proceeding in accordance with the CRC's established contract dispute resolution guidelines. The proceeding will provide the Contractor with an opportunity to be heard.

(f) Following a decision pursuant to (d) 2 or (d) 3, the CRC shall make a written recommendation to the Assistant Commissioner for Administration who shall render the final DEC determination.

(g) At any time during the dispute resolution process, and upon mutual agreement of the parties, the Office of Hearings and Mediation Services (OHMS) may be requested to provide mediation services or other appropriate means to assist in resolving the dispute. Any findings or recommendations made by the OHMS will not be binding on either party.

(h) Final DEC determinations shall be subject to review only pursuant to Article 78 of the Civil Practice Law and Rules.

(i) Pending final determination of a dispute hereunder, the Contractor shall proceed diligently with the performance of the Contract in accordance with the decision of the designated individual. Nothing in this Contract shall be construed as making final the decision of any administrative officer upon a question of law.

(j) Notwithstanding the foregoing, at the option of the Contractor, the following shall be subject to review by the CRC: Disputes arising under Article 15-A of the Executive Law (Minority and Women Owned Business participation), the Department's determination with respect to the adequacy of the Contractor's Utilization Plan, or the Contractor's showing of good faith efforts to comply therewith. A request for a review before the CRC should be made, in writing, within twenty days of receipt of the Department's determination.

(k) The CRC will promptly convene a review in accordance with Article 15-A of the Executive Law and the regulations promulgated thereunder.

IX. Labor Law Provisions

(a) When applicable, the Contractor shall post, in a location designated by the Department, a copy of the New York State Department of Labor schedules of prevailing wages and supplements for this project, a copy of all re-determinations of such schedules for the project, the Workers' Compensation Law Section 51 notice, all other notices required by law to be posted at the site, the Department of Labor notice that this project is a public work project on which each worker is entitled to receive the prevailing wages and supplements for their occupation, and all other notices which the Department directs the Contractor to post. The Contractor shall provide a surface for such notices which is satisfactory to the Department. The Contractor shall maintain such notices in a legible manner and shall replace any notice or schedule which is damaged, defaced, illegible or removed for any reason. Contractor shall post such notices before commencing any work on the site and shall maintain such notices until all work on the site is complete.

(b) When appropriate, contractor shall distribute to each worker for this Contract a notice, in a form provided by the Department, that this project is a public work project on which each worker is entitled to receive the prevailing wage and supplements for the occupation at which he or she is working. Worker includes employees of Contractor and all Subcontractors and all employees of suppliers entering the site. Such notice shall be distributed to each worker before they start performing any work of this contract. At the time of distribution, Contractor shall have each worker sign a statement, in a form provided by the Department, certifying that the worker has received the notice required by this section, which signed statement shall be maintained with the payroll records required by the following paragraph (c).

(c) Contractor shall maintain on the site the original certified payrolls or certified transcripts thereof which Contractor and all of its Subcontractors are required to maintain pursuant to the New York Labor Law Section 220. Contractor shall maintain with the payrolls or transcripts thereof, the statements signed by each worker pursuant to paragraph (b).

(d) Within thirty days of issuance of the first payroll, and every thirty days thereafter, the Contractor and every subcontractor must submit a transcript of the original payroll to the Department, which transcript must be subscribed and affirmed as true under penalty of perjury.

X. **Offset** In accordance with State Law, the Department has the authority to administratively offset any monies due it from the Contractor, from payments due to the Contractor under this contract. The Department may also (a) assess interest or late payment charges, and collection fees, if applicable; (b) charge a fee for any dishonored check; (c) refuse to renew certain licenses and permits.

XI. **Tax Exemption** Pursuant to Tax Law Section 1116, the State is exempt from sales and use taxes. A standard state voucher is sufficient evidence thereof. For federal excise taxes, New York's registration Number 14740026K covers tax-free transactions under the Internal Revenue Code.

XII. **Litigation Support** In the event that the Department becomes involved in litigation related to the subject matter of this contract, the Contractor agrees to provide background support and other litigation support, including but not limited to depositions, appearances, and testimony. Compensation will be negotiated and based on rates established in the contract, or as may otherwise be provided in the contract.

XIII. **Equipment** Any equipment purchased with funds provided under this contract, shall remain the property of the Department, unless otherwise provided in the contract. The Contractor shall be liable for all costs for maintaining the property in good, usable condition. It shall be returned to the Department upon completion of the contract, in such condition, unless the Department elects to sell the equipment to the Contractor, upon mutually agreeable terms.

XIV. **Inventions or Discoveries** Any invention or discovery first made in performance of this Contract shall be the property of the Department, unless otherwise provided in the contract. The Contractor agrees to provide the Department with any and all materials related to this property. At the Department's option, the Contractor may be granted a non-exclusive license.

XV. **Patent and Copyright Protection**

If any patented or copyrighted material is involved in or results from the performance of this Contract, this Article shall apply.

(a) The Contractor shall, at its expense, defend any suit instituted against the Department and indemnify the Department against any award of damages and costs made against the Department by a final judgment of a court of last resort based on the claim that any of the products, services or consumable supplies furnished by the Contractor under this Contract infringes any patent, copyright or other proprietary right; provided the Department gives the Contractor:

- (1) prompt written notice of any action, claim or threat of infringement suit, or other suit, and
- (2) the opportunity to take over, settle or defend such action at the Contractor's sole expense, and
- (3) all available information, assistance and authority necessary to the action, at the Contractor's sole expense.
- (4) The Contractor shall control the defense of any such suit, including appeals, and all negotiations to effect settlement, but shall keep the Department fully informed concerning the progress of the litigation.

(b) If the use of any item(s) or parts thereof is held to infringe a patent or copyright and its use is enjoined, or Contractor believes it will be enjoined, the Contractor shall have the right, at its election and expense to take action in the following order of precedence:

- (1) procure for the Department the right to continue using the same item or parts thereof;
- (2) modify the same so that it becomes non-infringing and of at least the same quality and performance;
- (3) replace the item(s) or parts thereof with noninfringing items of at least the same quality and performance;
- (4) if none of the above remedies are available, discontinue its use and eliminate any future charges or royalties pertaining thereto. The Contractor will buy back the infringing product(s) at the State's book value, or in the event of a lease, the parties shall terminate the lease. If discontinuation or elimination results in the Contractor not being able to perform the Contract, the Contract shall be terminated.

(c) In the event that an action at law or in equity is commenced against the Department arising out of a claim that the Department's use of any item or material pursuant to or resulting from this Contract infringes any patent, copyright or proprietary right, and such action is forwarded by the Department to the Contractor for defense and indemnification pursuant to this Article, the Department shall copy all pleadings and documents forwarded to the Contractor together with the forwarding correspondence and a copy of this Contract to the Office of the Attorney General of the State of New York. If upon receipt of such request for defense, or at any time thereafter, the Contractor is of the opinion that the allegations in such action, in whole or in part, are not covered by the indemnification set forth in this Article, the Contractor shall immediately notify the Department and the Office of the Attorney General of the State of New York in writing and shall specify to what

extent the Contractor believes it is and is not obligated to defend and indemnify under the terms and conditions of this Contract. The Contractor shall in such event protect the interests of the Department and State of New York and secure a continuance to permit the State of New York to appear and defend its interests in cooperation with Contractor as is appropriate, including any jurisdictional defenses which the Department and State shall have.

(d) The Contractor shall, however, have no liability to the Department under this Article if any infringement is based upon or arises out of: (1) compliance with designs, plans, or specifications furnished by or on behalf of the Department as to the items; (2) alterations of the items by the Department; (3) failure of the Department to use updated items provided by the Contractor for avoiding infringement; (4) use of items in combination with apparatus or devices not delivered by the Contractor; (5) use of items in a manner for which the same were neither designed nor contemplated; or (6) a patent or copyright in which the Department or any affiliate or subsidiary of the Department has any direct or indirect interest by license or otherwise.

(e) The foregoing states the Contractor's entire liability for, or resulting from, patent or copyright infringement or claim thereof.

XVI. Force Majeure The term Force Majeure shall include acts of God, work stoppages due to labor disputes or strikes, fires, explosions, epidemics, riots, war rebellion, sabotage or the like. If a failure of or delay in performance by either party results from the occurrence of a Force Majeure event, the delay shall be excused and the time for performance extended by a period equivalent to the time lost because of the Force majeure event, if and to the extent that:

(a) The delay or failure was beyond the control of the party affected and not due to its fault or negligence; and

(b) The delay or failure was not extended because of the affected party's failure to use all reasonable diligence to overcome the obstacle or to resume performance immediately after such obstacle was overcome; and

(c) The affected party provides notice within (5) days of the onset of the event, that it is invoking the protection of this provision.

XVII. Freedom of Information Requests The Contractor agrees to provide the Department with any records which must be released in order to comply with a request pursuant to the Freedom of Information Law. The Department will provide the contractor with an opportunity to identify material which may be protected from release

and to support its position.

XVIII. Precedence In the event of a conflict between the terms of this Appendix B and the terms of the Contract (including any and all attachments thereto and amendments thereof, but not including Appendix A), the terms of this Appendix B shall control. In the event of a conflict between the terms of this Appendix B, and the terms of Appendix A, the terms of Appendix A shall control.

XIX. Article 15-Requirements

PARTICIPATION BY MINORITY GROUP MEMBERS AND WOMEN WITH RESPECT TO STATE CONTRACTS: REQUIREMENTS AND PROCEDURES

(a) General Provisions

(1)The Department is required to implement the provisions of New York State Executive Law Article 15-A and 5 NYCRR Parts 142-144 ("MWBE Regulations") for all State contracts as defined therein, with a value (1) in excess of \$25,000 for labor, services, equipment, materials, or any combination of the foregoing or (2) in excess of \$100,000 for real property renovations and construction.

(2)The Contractor to the subject contract (the "Contractor" and the "Contract," respectively) agrees, in addition to any other nondiscrimination provision of the Contract and at no additional cost to the New York State Department (the "Department", to fully comply and cooperate with the Department in the implementation of New York State Executive Law Article 15-A. These requirements include equal employment opportunities for minority group members and women ("EEO") and contracting opportunities for certified minority and women-owned business enterprises ("MWBEs"). Contractor's demonstration of "good faith efforts" pursuant to 5 NYCRR §142.8 shall be a part of these requirements. These provisions shall be deemed supplementary to, and not in lieu of, the nondiscrimination provisions required by New York State Executive Law Article 15 (the "Human Rights Law") or other applicable federal, state or local laws.

(3)Failure to comply with all of the requirements herein may result in a finding of non-responsiveness, non-responsibility and/or a breach of contract, leading to the withholding of funds or such other actions, liquidated damages pursuant to Section VII of this Article or enforcement proceedings as allowed by the Contract.

(b) Contract Goals

(1) For purposes of this procurement, the Department hereby establishes an overall goal of 30% for Minority and Women-Owned Business Enterprises (“MWBE”) participation, (based on the current availability of qualified MBEs and WBEs).

(2) For purposes of providing meaningful participation by MWBEs on the Contract and achieving the Contract Goals established in Section II-A hereof, Contractor should reference the directory of New York State Certified MWBEs found at the following internet address;

<https://ny.newnycontracts.com>

Additionally, the Contractor is encouraged to contact the Division of Minority and Woman Business Development ((518) 292-5250; (212) 803-2414; or (716) 846-8200) to discuss additional methods of maximizing participation by MWBEs on the Contract.

(3) Where MWBE goals have been established herein, pursuant to 5 NYCRR §142.8, Contractor must document “good faith efforts” to provide meaningful participation by MWBEs as subcontractors or suppliers in the performance of the Contract. In accordance with Section 316-a of Article 15-A and 5 NYCRR §142.13, the Contractor acknowledges that if Contractor is found to have willfully and intentionally failed to comply with the MWBE participation goals set forth in the Contract, such a finding constitutes a breach of contract and the Contractor shall be liable to the Department for liquidated or other appropriate damages, as set forth herein.

(c) Equal Employment Opportunity (EEO)

(1) Contractor agrees to be bound by the provisions of Article 15-A and the MWBE Regulations promulgated by the Division of Minority and Women's Business Development of the Department of Economic Development (the “Division”). If any of these terms or provisions conflict with applicable law or regulations, such laws and regulations shall supersede these requirements. Contractor shall comply with the following provisions of Article 15-A:

(i) Contractor and Subcontractors shall undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status. For these purposes, EEO shall apply in the

areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation.

(ii) The Contractor shall submit an EEO policy statement to the Department within seventy two (72) hours after the date of the notice by Department to award the Contract to the Contractor.

(iii) If Contractor or Subcontractor does not have an existing EEO policy statement, the Department may provide the Contractor or Subcontractor a model statement. This statement can be found at the link provided in Section 8.

(iv) The Contractor’s EEO policy statement shall include the following language:

- a. The Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability or marital status, will undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination, and shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force.
- b. The Contractor shall state in all solicitations or advertisements for employees that, in the performance of the contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.
- c. The Contractor shall request each employer Department, 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 employer Department, labor union, or representative will not discriminate on the basis of race, creed, color, national origin, sex age, disability or marital status and that such union or representative will affirmatively cooperate in the

implementation of the Contractor's obligations herein.

- d. The Contractor will include the provisions of Subdivisions (a) through (c) of this Subsection 4 and Paragraph "E" of this Section III, which provides for relevant provisions of the Human Rights Law, 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 Contract.
- e. **EEO Contract Goals** for the purposes of this procurement, the Department hereby establishes a goal of **10%** Minority Labor Force Participation, **10%** Female Labor Force Participation.

- (iii) In limited instances, Contractor may not be able to separate out the workforce utilized in the performance of the Contract from Contractor's and/or subcontractor's total workforce. When a separation can be made, Contractor shall submit the Workforce Report and indicate that the information provided related to the actual workforce utilized on the Contract. When the workforce to be utilized on the contract cannot be separated out from Contractor's and/or subcontractor's total workforce, Contractor shall submit the Workforce Report and indicate that the information provided is Contractor's total workforce during the subject time frame, not limited to work specifically under the Contract.

(2) Staffing Plan Form

To ensure compliance with this Section, the Contractor shall submit a staffing plan to document the composition of the proposed workforce to be utilized in the performance of the Contract by the specified categories listed, including ethnic background, gender, and Federal occupational categories. Contractors shall complete the Staffing plan form and submit it as part of their bid or proposal or within a reasonable time, but no later than the time of award of the contract.

(3) Workforce Employment Utilization Report Form ("Workforce Report")

- (i) Once a contract has been awarded and during the term of Contract, Contractor is responsible for updating and providing notice to the Department of any changes to the previously submitted Staffing Plan. This information is to be submitted on a quarterly basis during the term of the Contract to report the actual workforce utilized in the performance of the Contract by the specified categories listed including ethnic background, gender, and Federal occupational categories. The Workforce Report must be submitted to report this information.
- (ii) Separate forms shall be completed by Contractor and any subcontractor performing work on the Contract.

- (2) Contractor shall comply with the provisions of the Human Rights Law, all other State and Federal statutory and constitutional non-discrimination provisions. Contractor 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.

(d) MWBE Utilization Plan

- (1) The Contractor represents and warrants that Contractor has submitted an MWBE Utilization Plan either prior to, or at the time of, the execution of the contract.
- (2) Contractor agrees to use such MWBE Utilization Plan for the performance of MWBEs on the Contract pursuant to the prescribed MWBE goals set forth in Section III-A of this Appendix.
- (3) Contractor further agrees that a failure to submit and/or use such MWBE Utilization Plan shall constitute a material breach of the terms of the Contract. Upon the occurrence of such a material breach, Department shall be entitled to any remedy provided herein, including but not limited to, a finding of Contractor non-responsiveness.

(e) Waivers

- (1) For Waiver Requests Contractor should use Waiver Request Form.

(2) If the Contractor, after making good faith efforts, is unable to comply with MWBE goals, the Contractor may submit a Request for Waiver form documenting good faith efforts by the Contractor to meet such goals. If the documentation included with the waiver request is complete, the Department shall evaluate the request and issue a written notice of acceptance or denial within twenty (20) days of receipt.

(4) If the Department, upon review of the MWBE Utilization Plan and updated Quarterly MWBE Contractor Compliance Reports determines that Contractor is failing or refusing to comply with the Contract goals and no waiver has been issued in regards to such non-compliance, the Department may issue a notice of deficiency to the Contractor. The Contractor must respond to the notice of deficiency within seven (7) business days of receipt. Such response may include a request for partial or total waiver of MWBE Contract Goals.

(f) Quarterly MWBE Contractor Compliance Report

Contractor is required to submit a Quarterly MWBE Contractor Compliance Report Form to the Department by the 10th day following each end of quarter over the term of the Contract documenting the progress made towards achievement of the MWBE goals of the Contract.

(g) Liquidated Damages - MWBE Participation

(1) Where Department determines that Contractor is not in compliance with the requirements of the Contract and Contractor refuses to comply with such requirements, or if Contractor is found to have willfully and intentionally failed to comply with the MWBE participation goals, Contractor shall be obligated to pay to the Department liquidated damages.

(2) Such liquidated damages shall be calculated as an amount equaling the difference between:

- (i) All sums identified for payment to MWBEs had the Contractor achieved the contractual MWBE goals; and
- (ii) All sums actually paid to MWBEs for work performed or materials supplied under the Contract.

(3) In the event a determination has been made which requires the payment of liquidated damages and such identified sums have not been withheld by the Department, Contractor shall pay such liquidated damages to the Department within sixty (60) days after they are assessed by the Department unless prior to the expiration of such sixtieth day, the Contractor has filed a complaint with the

Director of the Division of Minority and Woman Business Development pursuant to Subdivision 8 of Section 313 of the Executive Law in which event the liquidated damages shall be payable if Director renders a decision in favor of the Department.

(h) Forms

The following forms referenced in Article XVIII 3-A-3, 3B, 3C and 5A can be found at <http://www.dec.ny.gov/about/48854.html>

ATTACHMENT C

Questions and Responses

**ATTACHMENT C
QUESTIONS AND ANSWERS
PRE-BID CONFERENCE
WEDNESDAY AUGUST 19, 2020 09:00 & 13:00
REMEDIAL CONSTRUCTION AT THE
AL TECH SPECIALTY STEEL SITE
CONTRACT NO. D011842**

Questions during Pre-Bid Conference

Question 1: Dave Cofield's comments stated precautions to be taken while working ACM clean-up during winter temperatures. Project documentation states Winter shutdowns. Which one is correct? **Answer 1: The winter shutdown is a bid item of the Contract Documents. There are two winter shutdowns planned if needed as specified in the Contract Documents. However, it is likely that work will continue during cold weather periods outside of the winter shutdown periods.**

Question 2: Will it be allowed to drop structures with the "skins" on them? **Answer 2: The preference is to remove Galbestos using controlled removal. The Contractor shall coordinate with the New York State Department of Labor (NYSDOL) and apply for an asbestos abatement variance.**

Question 3: Do the variances fall on the contractor? **Answer 3: The Contractor is required to complete the application to obtain the NYSDOL Variance.**

Question 4: Is all Air / Camp monitoring a responsibility of the contractor?
Answer 4: Yes.

Question 5: For all noted contaminants, to what "level" do surfaces (floors / ground, ledges, structural steel) need to be cleaned up to? **Answer 5: Refer to Section 02 24 23 – Sampling and Analysis.**

Question 6: Does foliage adjacent to the structures need to be handled as containing ACM (near shedding Galbestos siding)? **Answer 6: Yes, but only if visible delaminated Galbestos is observed.**

Written Questions received via e-mail before the Pre-Bid Conference

Question 7: The PCBs in the caulk I assume are being classified as PCB Bulk product and should be managed under 40 CFR 761.62 for disposal? **Answer 7: Yes.**

Question 8: The PCBs in the soil and on the Galbestos and any other items are they being classified as PCB Remediation waste to be managed under 40 CFR 761.61? **Answer 8: PCB remediation waste includes but is not limited to: grass and soil or other debris incidentally mixed with delaminated Galbestos contaminated with PCBs above 1 part per million.**

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Question 9: If classified as PCB Remediation waste has NYS DEC involved EPA, so there will be concurrence by EPA that the work is being performed under either 40 CFR 761.61(a), a self-implementing procedure or 40 CFR 761.61(c), a Risk-based disposal approval? **Answer 9: No.**

Question 10: Bid item UC-5 includes transportation and off-site disposal of hazardous waste. Is the hazardous waste something other than NY State B007 PCB solids? **Answer 10: UC-5 includes any materials that would classify as listed or characteristic hazardous wastes.** Does it include any RCRA waste codes? **Yes.** Does it contain any asbestos? **Some hazardous wastes will contain asbestos.**