

# REQUEST FOR QUOTATION

<b>Vendor Name and No.:</b>     <b>Buyer:</b> John Santiago/212-435-4613/john.santiago@panynj.gov	<b>Collective/Bid#</b> <b>Bid Due Date</b> 46320                      07/8/2016  Bids must be received no later than 11:00 AM on the above Bid Due Date.  <b>Deliver Goods/Services To:</b> PATH Consolidated Maintenance Facility 120 Academy Street Jersey City, NJ 07302
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Quantity	Description	Unit Price	Total
	SUPPLY AND DELIVER NEW STANDARD STRENGTH RUNNING RAIL, 39-FOOT 115RE, TO PATH  NOTE: These items may be federally funded in whole or in part by the Federal Transit Administration (FTA). Accordingly, FTA requirements are part of the agreement and will be applicable to the supply of such items.  <p style="text-align: center;">THIS IS A FORMAL BID INVITATION</p> The following documents are attached and incorporated by reference as part of this Bid and shall be made part of the Contract resulting from this Bid: 1. Port Authority Trans-Hudson Corporation, Way & Structures Division, Specifications for Running Rail (11/7/14), and Drawing No. C11 for Rail Drilling Patterns and Joint Bars (4/26/05).  2. The following additional items are bid submittal requirements contained within the Federal Transit Administration (FTA) Requirements and/or solicitation documents: a) Purchase Order Terms & Conditions b) Federal Transit Administration Requirements c) Appendix A1: DBE Goals Statement d) Appendix A2: DBE Participation Plan and Affirmation Statement e) Appendix A3: Modified DBE Participation Plan and Affirmation Statement f) Appendix A4: Information on Solicited Firms g) Appendix A5: Pre-Award DBE Trucking Commitment Form h) Appendix A6: DBE Regular Dealer Verification Form  An award will be made to the lowest, responsive and responsible bidder.		
	<b>PLEASE QUOTE FULLY DELIVERED PRICES</b>	<b>PAYMENT TERMS</b>	<b>Total Delivered Price</b>

**This Quotation is subject to the terms and conditions set forth on the back page hereof. Bidder is advised to read these before signing.**

We have read the instructions and, if favored with an order, we agree to furnish the items enumerated herein at the prices and under the conditions indicated.

Signed \_\_\_\_\_  
 Firm Name \_\_\_\_\_  
 Telephone number \_\_\_\_\_ Date \_\_\_\_\_  
 Fax Number \_\_\_\_\_  
 Federal Taxpayer ID \_\_\_\_\_

**Bidder  
Must  
Sign  
In  
Two  
Places**

**NOTICE TO BIDDERS:** Unless the following term of assurance that the above offer is irrevocable is signed, the offer submitted herein shall not be deemed to be complete.

The foregoing offer shall be irrevocable for 90 days after the date on which The PORT AUTHORITY TRANS-HUDSON CORPORATION opens this proposal.

Signed \_\_\_\_\_ Date \_\_\_\_\_  
 Firm Name \_\_\_\_\_

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Vendor Name and No.:	Collective/Bid# 46320	Bid Due Date 07/8/2016
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	<p>Bid Submission Instructions:</p> <p>Sealed Bids must be submitted to the following address by the due date and time listed on this Request for Quotation, where they will be publicly opened and read:</p> <p>The Port Authority of NY &amp; NJ                      Attn: Bid Custodian                      Procurement Department                      4 World Trade Center                      150 Greenwich Street, 21st Floor                      New York, NY 10007</p> <p>Clearly mark the outside of your envelope/package with "BID ENCLOSED", the Collective/Bid Number and Due Date, and your complete company name and address.</p> <p>Bids are accepted only Monday through Friday, excluding Port Authority holidays, between the hours of 8 A.M. &amp; 5 P.M., via regular mail, express delivery service or hand delivery. Express carrier deliveries by commercial vehicles can be made via vendors approved by Silverstein Properties, the 4 World Trade Center (4WTC) Property Manager, through the Vehicle Security Center (VSC). Presently, UPS is the only delivery vendor with approved recurring delivery times. There is extensive security at the World Trade Center Site. Individuals must present a valid government-issued photo ID to enter 4 WTC. Individuals without packages or carrying small packages or boxes that can be conveyed by hand or on a hand truck may enter through the lobby. All envelopes, packages and boxes may be subject to additional security screening.</p>		
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Quantity	Description	Unit Price	Total
	<p>There is no parking available at 4 WTC/150 Greenwich Street, and parking in the surrounding area is extremely limited.</p> <p>A valid government-issued photo ID is required to gain access into the building to attend the bid opening or hand deliver a bid.</p> <p>Bids that are not received by the bid custodian by the scheduled bid opening due date time will be considered late. If any Addenda are posted or sent as part of this Bid, the Bidder shall complete, sign and include with its Bid the addenda form(s). In the event any Bidder fails to conform to these instructions, its Bid will nevertheless be construed as though the Addenda had been acknowledged.</p> <p>If the Bidder downloaded this solicitation document, it is the responsibility of the Bidder to periodically check the Port Authority website at <a href="http://www.panynj.gov/business-opportunities/bid-proposal-advertisements.html">http://www.panynj.gov/business-opportunities/bid-proposal-advertisements.html</a> and download any addenda that might have been issued in connection with this solicitation.</p>		
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Quantity	Description	Unit Price	Total
	The prices quoted on this Request for Quotation form shall be in United States Dollars. All figures inserted will be interpreted as being quoted in United States Dollars. Delivery term is FOB Destination.		
80 EA	New, Standard Strength 115RE Rail, 39 feet long. Manufacture in accordance with "PORT AUTHORITY TRANS-HUDSON CORPORATION WAY & STRUCTURES DIVISION SPECIFICATIONS FOR RUNNING RAIL" Dated 11/7/14. Rails shall be drilled for six hole bars. See Drawing No. C-11 dated 4/26/05 for drilling pattern. No shorts will be permitted, deliver on flatbed trucks to PATH "C" Yard in Jersey City, New Jersey.  Lead Time after receipt of order: _____ Days  In the event of a Purchase Order/Contract resulting from this Bid, the Contractor shall deliver within the longest quoted Lead Time.  The Purchase Order/Contract shall expire no later than ninety (90) days from the longest quoted Lead Time.		
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 Firm Name \_\_\_\_\_

**PORT AUTHORITY TRANS-HUDSON CORPORATION  
WAY & STRUCTURES DIVISION  
SPECIFICATIONS FOR RUNNING RAIL**

November 7, 2014

**1.01 GENERAL**

- A. The following specifies requirements for the manufacture and delivery of steel rails for use on the Port Authority Trans-Hudson Corporation (PATH) transit system.
- B. The rail section, length of standard rail, hardness properties, drilling, and delivery method of rail to be furnished shall be specified in the purchase requisition documents.

**1.02 REFERENCE DOCUMENTS AND SUBMITTALS**

- A. Except as modified by the Furnished Drawings or these Specifications, the rails shall be manufactured in conformance with the current edition of:
  - 1. The American Railway Engineering and Maintenance-of-Way Association (AREMA) Manual for Railway Engineering.
  - 2. ASTM International Designation A1-00, Standard Specification for Carbon Steel Tee Rails (Reapproved 2010)
- B. When furnished, Drawings will be identified in the purchase requisition documents.
- C. The manufacturer shall furnish records of inspection, testing, shipment and certifications including, but not limited to, the following:
  - 1.) The chemical analysis of the rails shipped under the purchase order, listed by cast or ingot and heat number, and the specified chemical analysis elements.
  - 2.) The Brinell Hardness of the rails shipped under the purchase order, by cast or ingot and heat number, and the hardness pattern for high strength rails.
  - 3.) The method of hydrogen elimination.
  - 4.) A shipping statement of the rails shipped including the number of pieces of each length, and the total tons shipped on each vehicle.
  - 5.) A statement that all rails shipped meet the ultrasonic requirements specified.
  - 6.) A statement that all macroetched samples representing the rails supplied meet the Macroetch requirements specified.
- D. Submittals required by these specifications shall be sent to:

Port Authority Trans-Hudson Corp.  
One PATH Plaza, Ninth Floor  
Jersey City, New Jersey 07306  
Attention: Superintendent, Way & Structures Division

### 1.03 TESTING AND REPORTING

- A. PATH may elect to have its representative present at all manufacturing processes and to witness all tests and measurements required by the specifications and/or the manufacturing process. The Vendor shall notify PATH a minimum of two weeks prior to the start of manufacturing activities to facilitate the scheduling of its representative.
- B. The manufacturer shall afford the PATH representative all reasonable facilities necessary to satisfy him that the material is being produced and furnished in accordance with the specifications. The PATH representative will not interfere unnecessarily with the manufacturer's operations.
- C. Unless specifically stated otherwise in these specifications, the manufacturer shall submit to PATH results of all tests and measurements taken during the manufacturing process.

### 2.01 SECTION DESIGN AND MANUFACTURE

- A. Rail section, length of standard rail, hardness properties, drilling, and delivery method of rail to be furnished shall be specified in the purchase requisition documents and shall conform to the drawing(s) listed or referenced therein.
- B. Rail shall be new, manufactured subsequent to bid award date and by a steel mill having minimum experience of five-year production and supply to northeastern United States transit agencies. At the time of bid, the Bidder, if not a rail manufacturer, shall submit the name of the steel mill that will produce the rails in the event he becomes the successful Bidder. Upon request, the Bidder shall provide the names of the agencies, as well as the names of contact person(s) and telephone number(s) to verify that the requirements of this section are met.
- C. The steel shall be made by the basic oxygen, or electric furnace process and shall be cast by either the "continuous" process or the "hot topped ingot" process. Sufficient discard shall be taken from the bloom or ingot to insure freedom from segregation and pipe.

### 2.02 CHEMICAL COMPOSITION AND HYDROGEN ELIMINATION

- A. The chemical composition of all rail, whether standard strength, head hardened, or fully heat treated, shall be determined through sample analysis preferably taken during the pouring of the heat. Separate test samples representing one of the first three and one of the last three ingots or continuously cast blooms shall be taken and analyzed. Determinations may be made chemically or spectrographically. The chemical composition shall be within the following limits (min. to max.), for the listed elements, given in **Weight Percent**:

B. <i>Element</i>	<i>For (100ARA-B/100-8)</i>	<i>For (115RE)</i>
Carbon	0.70 to 0.80	0.74 to 0.86
Manganese	0.70 to 1.00	0.75 to 1.25
Phosphorus, (max.)	0.020	0.020
Sulfur, (max.)	0.020	0.020
Silicon	0.10 to 0.50	0.10 to 0.60

Nickel	0.0	to	0.25	0.0	to	0.25
Chromium	0.0	to	0.30	0.0	to	0.30
Molybdenum	0.0	to	0.060	0.0	to	0.060
Vanadium	0.0	to	0.010	0.0	to	0.010
Aluminum	0.0	to	0.010	0.0	to	0.010

- C. When ladle tests are not available, finished material representing the heat may be product tested. Product analysis shall conform to specified limits given for ladle analysis in Weight Percent with the following additional allowances:

Carbon	0.04 % (under min. limit)	0.04 % (over max. limit)
Manganese	0.06 % (under min. limit)	0.06 % (over max. limit)
Phosphorus	-----	0.008 % (over max. limit)
Sulfur	-----	0.008 % (over max. limit)
Silicon	0.02 % (under min. limit)	0.05 % (over max. limit)

- D. To ensure that rail is processed by methods that prevent the formation of shatter cracks, all rail heats shall be tested for hydrogen content. Rail heats shall be tested for hydrogen content using either a sampling/analytical method or a direct measurement method of the liquid steel. The testing shall be performed either during the continuous casting process or during ingot teeming.
- E. The manufacturer shall define the method used to determine hydrogen content and, which of the three methods listed below will be used for hydrogen removal:
1. *Vacuum degassing*
  2. *Bloom control cooling*
  3. *Rail control cooling*
- F. The manufacturer shall record the hydrogen content measured. When requested, the results of the measurements as well as evidence of the procedures used to control the final rail hydrogen shall be submitted to PATH.

## 2.03 ULTRASONIC TESTING AND INTERIOR CONDITION

- A. Rail shall be ultrasonically tested for internal imperfections. Ultrasonic testing shall be done for the full length of rails. Rails of 100RB/100-8 section shall be ultrasonically tested in accordance with ASTM Designation A1-00, Section S2 "Ultrasonic Testing". Rails of 115RE section shall be ultrasonically tested in accordance with AREMA Chapter 4, Part 2, Section 2.1.8 "ULTRASONIC TESTING".
- B. The calibration test rails and calibration references shall conform to the requirements of ASTM Designation A1-00, Sections S2.2.2 and S2.2.3.1 for the testing of 100RB/100-8 rail sections and AREMA Chapter 4, Part 2, Sections 2.1.8.c and 2.1.8.d.(1) for the testing of 115RE rail section.
- C. For 100RB/100-8 rail sections, any indication equal to or greater than specified under S2.2.3.1, when scanning rail at the production speed, shall be cause for initial rejection. The

suspect rail may be retested using manual non-destructive testing techniques before final rejection. The testing criteria for the retesting shall be in accordance with S2.2.3.

- D. For 115RE rail, any indication equal to or greater than specified under 2.1.8.d.(1) when scanning rail at the production speed, shall be cause for initial rejection. The suspect rail may be retested using manual non-destructive testing techniques before final rejection. The testing criteria for the retesting shall be in accordance with 2.1.8.d.
- E. Rail shall be tested for acceptable interior condition by macroetching. Macroetch testing for 100RB/100-8 rail sections shall be performed in conformance with ASTM Designation A1-00 Section 6 "Interior Condition". The pictorial standards to be used for interior condition evaluation (Section 6.2.2) shall be the same as shown in the AREMA Chapter 4, Part 2, Section 2.1.9.3 "Macroetch Evaluation" and including Sections 2.1.9.3.1 and 2.1.9.3.2 for determining rejectionable conditions. Macroetch testing for 115RE rail section shall be performed in conformance with AREMA Chapter 4, Part 2, Section 2.1.9 "INTERIOR CONDITION/MACROETCH STANDARDS".

#### **2.04 HARDNESS PROPERTIES**

- A. Standard strength rail for the 100RB/100-8 sections shall have a Brinell Hardness value of 285 (min.). Standard strength rail for the 115RE section shall have a Brinell Hardness value of 310 (min.).
- B. High strength rail for 100RB/100-8 sections shall have a Brinell Hardness value of 321 (min.). High strength rail for the 115RE section shall have a Brinell Hardness value of 370 (min.).
- C. Hardness properties for 100RB/100-8 sections shall be determined in accordance with the requirements of ASTM Designation A1-00 Section 7 "Hardness Properties" with the test made 3/8" in from the surface on a prepared sample. Hardness properties for the 115RE section shall be determined in accordance with the requirements of AREMA Chapter 4, Part 2, Section 2.1.4.2 "Internal Hardness of High Strength Rail".
- D. The manufacturer shall report the test results to PATH with the final Brinell Hardness values for the rail furnished under the purchase order.
- E. High strength rails shall be marked by either a metal plate permanently attached to the neutral axis, hot stamped, or in the brand which gives the manufacturer, type and/or method of treatment.

#### **2.05 PHYSICAL PROPERTIES AND PERMISSIBLE VARIATIONS**

- A. Standard length rails shall be 39 feet and 80 feet, when corrected to a temperature of 60 degrees F. Standard length to be furnished under the purchase order, shall be as specified in the purchase requisition documents.
- B. Rails shall be furnished in full lengths only. When so specified in the purchase requisition documents, up to 10 percent of standard length rail of the total tonnage accepted from each

individual rolling will be accepted in shorter lengths as follows: for 80 foot rail, permissible short lengths will be 78, 74, 70, 66, 60, and 39 feet. For 39 foot rail, permissible short lengths will be 36, 33, and 30 feet.

- C. Rail shall be furnished with drilled ends or with blank ends as specified in the purchase requisition documents. When specified, drilling of rail ends shall conform to the drawings and to the ASTM Designation A1-00 Section 8.3 "Drilling" for 100RB/100-8 sections and AREMA Chapter 4, Part 2, Section 2.1.12 "DRILLING" for 115RE section.
- D. Drilled rails of 100RB/100-8 sections shall be end-hardened and chamfered in accordance with ASTM Designation A1-00, Supplementary Section S1 "End Hardening". Drilled rails of 115RE section shall be end-hardened and chamfered in accordance with AREMA Chapter 4, Part 2, Section 2.1.17.1 "End Hardening".
- E. Rail of 100RB/100-8 sections shall conform to the drawings and to the ASTM Designation A1-00 Section 8 "Permissible Variations of Dimensions, Weight, and Other Physical Attributes". Rail of 115RE section shall conform to the drawings and to AREMA Chapter 4 Part 2 Section 2.1.5 "SECTION".
- F. The manufacturer shall provide appropriate gages for measuring and verifying the rail meets the specifications criteria for permissible variations. The gages for 115RE section shall be as shown in AREMA Chapter 4 Part 2 Section 2.1.20 "APPENDIX 3". Gages for the 100RB/100-8 sections shall be similar in design to the gages specified for the 115RE section but made specifically to measure variations for the individual manufactured section. All gages shall be subject to approval by PATH.
- G. When requested, the results of the actual measuring and recording of finished rail variations shall be submitted to PATH.

### **3.01 BRANDING AND STAMPING**

- A. Marking of 100RB/100-8 rail sections, including branding and stamping shall conform to ASTM Designation A1-00 Section 14 "Product Marking".
- B. Marking of 115RE rail section, including branding and stamping shall conform to AREMA Chapter 4, Part 2 Section 2.1.6 "BRANDING AND STAMPING".
- C. The manufacturer shall submit the data and its arrangement of the intended branding and stamping to be used on the rails furnished under the purchase order.

### **3.02 SURFACE CLASSIFICATION**

- A. Rails which contain surface imperfections in such number or of such character as will, in the judgment of the PATH representative, render them unfit for recognized uses, shall be rejected.
- B. Rails with Hot Marks, Cold Scratches, or Protrusions, in excess of limits specified by AREMA Chapter 4, Part 2, Sections 2.1.10.1 through 2.1.10.3 shall be rejected. These

requirements, though specified in AREMA, shall also apply to 100RB/100-8 rail sections supplied under the purchase order.

### **3.03 WORKMANSHIP, FINISH, AND RESIDUAL STRESS**

- A. To meet straightness requirements, rails of 100RB/100-8 sections shall be finished in conformance to ASTM Designation A1-00, Section 8.4 "Finish".
- B. To meet straightness requirements, rails of 115RE section shall be finished in conformance to AREMA Chapter 4, Part 2, Section 2.1.13 "WORKMANSHIP".
- C. Rails shall be tested to evaluate residual stresses that may have been induced through the manufacturing process. Testing for all rail sections furnished including 100RB/100-8 and 115RE shall be in conformance with AREMA Chapter 4, Part 2, Section 2.1.13.2 "Evaluation of Residual Stresses in Rail".
- D. When requested, test results and any retests shall be submitted to PATH.

### **3.04 ACCEPTANCE, LOADING, SHIPPING, MEASUREMENT AND PAYMENT**

- A. To be accepted, the rails offered must fulfill all the requirements of these specifications. Only A-rails produced under the purchase order will be accepted. In addition, the number of A-rails furnished shall not exceed the percentage of A-rails obtained by the manufacturer's normal ingot practice.
- B. Rails shall be handled carefully to avoid damage and shall be loaded with the branding on all rails facing the same direction. Rails of different markings shall not be intermixed in loading, but shall be segregated and loaded head up. When there are not enough rails of one marking for a full vehicle load, smaller groups consisting of tiers, may be loaded onto one vehicle subject to approval by PATH.
- C. Rails of 80 feet standard length shall be shipped on bulkhead flat cars only. Gondolas shall not be acceptable for shipping. Rails of 39 feet standard length shall be shipped on bulkhead flat cars but, when so specified by the purchase requisition documents, shall be shipped on flatbed trucks.
- D. Rails shall be measured by the number of rails furnished in accordance with the specifications and as specified in the purchase requisition documents. When so purchased, in accordance with the purchase requisition documents, rail shall be measured by the United States Standard tons furnished in accordance with the specifications. The number of tons shall be calculated based on the nominal weight per yard for the rail section ordered and furnished.
- E. Payment will be made at the unit bid price for: (A) the number of rails furnished or, when so purchased, (B) tons of rail furnished in accordance with the specifications and the purchase requisition documents.

**END OF SECTION**



## PURCHASE ORDER TERMS AND CONDITIONS

1. The Port Authority (Authority) reserves the right to request information relating to seller's responsibility, experience and capability to perform the work.

2. WARRANTY – The Seller warrants that the supplies or equipment delivered hereunder shall be free from all defects in material and workmanship and shall comply with all the requirements of this Order for a period of one

(1) year from date such supplies or equipment are placed in use.

3. PAYMENT – The Total Delivered price shall include the separate unit and total FOB delivered prices. Payment terms are net 30 days. Cash discounts for prompt payment of invoices may be taken but will not be considered in determining award, except in the case of tie bids.

Unless otherwise provided, complete shipment of all items must be in one delivery FOB delivery point. Payment will not be made on partial deliveries unless authorized in advance by the party to be charged and the discount, if any, will be taken on the total order.

4. CHANGES – Acceptance of seller's offer will be only by Purchase Order Form signed by the Authority. The Authority may at any time, by a written order, make changes within the general scope of this Purchase Order, in any one or more of the following: (a) drawings, designs, or specifications; (b) method of shipment or packing; and (c) place of delivery. If any such change causes an increase or decrease in the cost of, or the time required for, performance of this Purchase Order, an equitable adjustment shall be made in the Purchase Order price or delivery schedule, or both, and the Purchase Order shall be modified in writing accordingly. Any claim by the Seller for adjustment under this section must be asserted within 30 days from the date of receipt by the Seller of a notification of change: provided, however, that nothing in this section, "CHANGES," shall excuse the Seller from proceeding with the Purchase Order as changed. Except as otherwise provided herein no payment for CHANGES shall be made, unless the Changes and adjustments in price, if any, have been authorized in writing by the Authority.

5. INSPECTION AND ACCEPTANCE – Inspection and acceptance will be conducted at the destination, unless otherwise provided. Any risk of loss will be the Seller's responsibility until such delivery and acceptance made, unless loss results from negligence of the Authority.

6. VARIATION IN QUANTITY – No variation in the quantity of any item called for by this Purchase Order will be accepted unless such variation has been caused by

conditions of loading, shipping, or packing, or allowances in manufacturing processes, and then only to the extent, if any, specified elsewhere in this Purchase Order.

7. DEFAULT-DELAYS – The Authority may cancel this Purchase Order in whole or in part in the event that Seller fails or refuses to deliver any of the items purchased, within the time provided or otherwise violates any of the conditions of this Purchase Order, or if it becomes evident that the Seller is not conducting the work in accordance with the specifications or with such diligence as to permit delivery on or before the delivery date.

In the event the Authority cancels this Purchase Order in whole or in part as herein provided, the Authority may procure, upon such terms and in such manner as the Authority may deem appropriate, materials or services similar to those so cancelled and the Seller shall be liable to the Authority for any excess costs for such similar materials or services; provided, that the Seller shall continue the performance of this Purchase Order to the extent not terminated under the provisions of this article. The rights and remedies of the Authority provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Purchase Order.

8. TERMINATION – The Authority may terminate this Purchase Order, in whole or in part, at any time by written notice to the Seller when it is in the Authority's best interest. The Seller shall be paid for items received and accepted, including shipping costs, if applicable, up to the time of termination. The Seller shall promptly submit its termination claim to the Authority to be paid to the seller.

9. FEDERAL, STATE & LOCAL TAXES – Sales to the Authority and to PATH are currently exempt from New York and New Jersey State and local taxes and generally from federal taxation. The Seller certifies that there is no federal, state, municipal or any other taxes included in the prices shown hereon.

10. The Authority shall have the absolute right to reject any or all proposals or to accept any proposal in whole or part and to waive defects in proposals. The Port Authority also reserves the right to seek clarification from any bidder about any statement in its bid that the Port Authority finds ambiguous.

11. Bidder may offer alternate manufacturer / brands, which shall be subject to Port Authority approval. Please indicate details of product being offered with bid.

12. If the Seller fails to perform in accordance with the terms of this Purchase Order, the Authority may obtain The goods or services from another contractor and

charge the Seller the difference in price, if any, a reletting cost of \$100, plus any other damages to the Authority.

13. Upon request, Sellers are encouraged to extend the terms and conditions of any terms agreement with the Authority to other government and quasi-government entities by separate agreement.

14. By signing this quotation or bid, the Seller certifies to all statements on Form PA 3764A regarding non-collusive bidding; compliance with the Authority Code of Ethics; and the existence of investigations, indictments, convictions, suspensions, terminations, debarments and other stated occurrences to assist the Authority in determining whether there are integrity issues which would prevent award of the contract to the Seller.

The Authority has adopted a policy set forth in full on PA 3764, that it will honor a determination by an agency of the State of New York or New Jersey that a bidder is not eligible to bid on or be awarded public contracts because the bidder has been determined to have engaged in illegal or dishonest conduct or to have violated prevailing wage legislation. The Terms and Conditions of PA 3764A apply to this order. A copy can be obtained by calling (201) 395-3405 or at <http://www.panynj.gov/business-opportunities/pdf/PA3764A.pdf>

15. The vendor may subcontract the services or use a supplier for the furnishing of materials required hereunder to such persons or entities as the Manager, Purchasing Services may from time to time expressly approve in writing. All further subcontracting shall also be subject to such approval.

16. The successful bidder (vendor) shall not issue nor permit to be issued any press release, advertisement, or literature of any kind, which refers to the Port Authority or that goods will be, are being or have been provided to it and/or that services will be, are being or have been performed for it in connection with this Agreement, unless the vendor first obtains the written approval of the Port Authority. Such approval may be withheld if for any reason the Port Authority believes that the publication of such information would be harmful to the public interest or is in any way undesirable.

17. PERSONAL NON-LIABILITY – Neither the Commissioners of the Port Authority nor any of them, nor any officer, agent or employee thereof, shall be charged personally by Contractor with any liability, or held personally liable to Contractor under any term or provision of this Contract, or because of its execution or attempted execution, or because of any breach, or attempted or alleged breach, thereof.

18. ADDITIONAL BIDDER INFORMATION  
Prospective Bidders are advised that additional vendor information, including but not limited to, forms, documents and other information, including protest procedures, may be found on the Port Authority website at: <http://www.panynj.gov/business-opportunities/become-vendor.html>.

19. FINANCIAL INFORMATION. The Bidder will be required to demonstrate that it is financially capable of performing the Contract resulting from this Bid. The determination of the Bidder's financial qualifications and ability to perform this Contract will be made by the Port Authority in its sole discretion. The apparent lowest Bidder may be required to submit, upon request, information including but not limited to the following: (a) Certified financial statements; (b) either reviewed or compiled statements from an independent accountant setting forth the aforementioned information shall be provided, (c) financial statements containing such information prepared directly by the Bidder if accompanied by a signed copy of the Bidder's most recent Federal income tax return and a statement in writing from the Bidder, signed by an executive officer or his/her authorized designee, that such statements accurately reflect the present financial condition of the Bidder (d) a statement in writing, signed by an executive officer of the Bidder or his/her designee, that the present financial condition of the Bidder is at least as good as that shown on the statements submitted; (e) Bidder's statement of work on hand, including any work on which a Bid has been submitted, containing a description of the work, the annual dollar value, the location by city and state, the current percentage of completion, the expected date for completion, and the name of an individual most familiar with the Bidder's work on these jobs; or (f) the name and address of the Bidder's banking institution, chief banking representative handling the Bidder's account, the Bidder's Federal Employer Identification Number (i.e., the number assigned to firms by the Federal Government for tax purposes), the Bidder's Dun and Bradstreet number, if any, the name of any other credit service to which the Bidder has furnished information, and the number, if any, assigned by such service to the Bidder's account.

#### 20. DISADVANTAGED BUSINESS ENTERPRISES (DBE) PROGRAM

This Contract resulting from this Bid is subject to the United States Department of Transportation regulations on Disadvantaged Business Enterprises (DBE's) contained in Part 26 of Title 49 of the Code of Federal Regulations. The following goal for DBE participation has been set for this Contract:

The Disadvantaged Business Enterprise (DBE) participation goal for this contract is 0% .This goal applies to firms owned and controlled by disadvantaged individuals<sup>1</sup> and certified as DBE's by the Authority.

Eligible DBE firms are listed on the following Uniform Certification Programs website:

New York UCP – <https://nysucp.newnycontracts.com>

New Jersey UCP – <http://www.njucp.net/>

Although a 0% DBE goal has been assigned to this Contract, in the event that any portion of the work is

subcontracted, the Bidder/Contractor will make concerted efforts to retain DBEs should any subcontracting opportunities arise.

By submitting a bid or proposal for this Contract, the proposer assures the Authority that it will meet the foregoing goal and shall submit the DBE Goals Statement and Affirmation Statement form (Appendix A1) with its Proposal.

The proposer shall submit, with its Proposal, the DBE Participation Plan and Affirmation Statement (Appendix A2) for each DBE firm it intends to use on this Contract. The DBE Participation Plan and Affirmation Statement shall provide the name and address of each DBE firm, a description of the work to be performed, the dollar value of each DBE subcontract and the signature affirmation from each DBE firm participating in this Contract.

The bidder shall submit with its Proposal the completed Information on Solicited Firms form (Appendix A4), listing every firm that provided a quotation to the bidder for any subcontract to be performed under this Contract, whether the firms are DBE certified and whether the firms' quotes were included in the final Proposal.

Bidders who are utilizing trucking firms to meet their DBE goal are directed to complete the "Pre-Award DBE Trucking Commitment Form" (Appendix A5) and submit the form with their Proposals for each DBE used on this Contract.

Bidders who are utilizing materials suppliers to meet their DBE goal are directed to complete the "DBE Regular Dealer Verification Form" (Appendix A6) and submit the form with their Proposals for each DBE used on this Contract.

1. By listing a firm on its DBE Participation Plan and Affirmation Statement (Appendix A2) the proposer is representing the following:
  - a. It intends to use the firm for the work specified in the DBE Participation Plan and Affirmation Statement (Appendix A2) to perform the work specified.
  - b. The firm is a certified DBE in the states of either New York or New Jersey and is technically and financially qualified to perform the work specified and that the firm is available to perform the work.
  - c. If it is awarded the contract, it will enter into a subcontract with such DBE (or an approved substitute), subject to the terms and conditions of this contract, for the work described and at the price set forth in the DBE Participation Plan and Affirmation Statement (Appendix A2).
  - d. It will not substitute a DBE firm listed in its DBE Participation Plan and Affirmation Statement (Appendix A2) unless the Port Authority provides prior written approval in

accordance with Paragraph J, below.

## 21. DBE MODIFICATIONS

In the event that a proposer wishes to modify its DBE Participation Plan and Affirmation Statement (Appendix A2) after its submission or after a contract is awarded, the proposer must then request approval for the modification from OBDCR in writing. A proposer may not, without OBDCR's prior consent, terminate a DBE subcontractor approved under this contract and then perform the work of the contract with its own forces or those of an affiliate. A modification includes any change to items of work, material, services, subcontract value or DBE firms, which differ from those identified on the approved DBE Participation Plan and Affirmation Statement (Appendix A2). When a DBE subcontractor is terminated or fails to complete its work for any reason, the Contractor must make good faith efforts to find another DBE subcontractor to substitute for the original DBE. These good faith efforts must be directed at finding other DBEs to perform at least the same amount of work under the contract as the former DBE to the extent needed to meet the contract goal. The Contractor must provide OBDCR with any and all documents and information as may be requested with respect to the modification. If OBDCR determines that the Contractor failed to make good faith efforts, the Port Authority may consider such failure a breach of contract, entitling the Port Authority to remedies provided herein, in addition to any and all other available remedies. Subsequent to Contract award, all changes to the DBE Participation Plan must be submitted via a Modified DBE Participation Plan and Affirmation Statement (Appendix A3) to the Manager for review and approval by the Authority's Office of Business Diversity and Civil Rights.

## 22. LIST OF DBE APPENDICES

- a. APPENDIX A1: DBE Goals Statement
- b. APPENDIX A2: DBE Participation Plan and Affirmation Statement
- c. APPENDIX A3: Modified DBE Participation Plan and Affirmation Statement
- d. APPENDIX A4: Information On Solicited Firms
- e. APPENDIX A5: Pre-Award DBE Trucking Commitment Form
- f. APPENDIX A6: DBE Regular Dealer Verification Form

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<sup>1</sup> Individuals who are rebuttably presumed to be socially and economically disadvantaged include women, Blacks, Hispanics, Native Americans, Asian-Pacific Americans, and Asian-Indian Americans. A bidder may meet the DBE goal by using any combination of disadvantaged businesses.

23. FEDERAL TRANSIT ADMINISTRATION REQUIREMENTS (for purchase orders in excess of \$3,500) – The attached cited Federal Acquisition Regulation clauses shall be incorporated herein.

## FEDERAL TRANSIT ADMINISTRATION REQUIREMENTS

1. **INCORPORATION OF FEDERAL TERMS** – As used herein, the term “Agreement” shall mean “Purchase Order”. This Agreement is anticipated to be partially funded by the Federal Transit Administration.

Anything to the contrary herein notwithstanding, all FTA-mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Contract. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any Authority requests that would cause the Authority to be in violation of the FTA terms and conditions.

Each and every provision required by the FTA to be inserted in this Agreement shall be deemed to be inserted herein and the Contract shall be read and enforced as though it were included herein. If any provision of this Contract shall be such as to effect non-compliance with any FTA requirement, such provision shall not be deemed to form part hereof, but the balance of this Agreement shall remain in full force and effect.

2. **FEDERAL CHANGES** –The Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference, as they may be amended or promulgated from time to time during the term of this Contract. Contractor’s failure to so comply shall constitute a material breach of this Contract. The most recent Federal laws, regulations, policies, and administrative practices apply to this Contract at any particular time, unless FTA issues a written determination otherwise. All standards or limits within this document are minimum requirements, unless modified by the FTA.

3. **NO FEDERAL OBLIGATIONS TO THIRD PARTY** – The Authority and the Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this Contract and shall not be subject to any obligations or liabilities to the Authority, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal Assistance provided by the FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

#### 4. ORGANIZATIONAL CONFLICT OF INTEREST

A. This Contract may give rise to a potential for an organizational conflict of interest. An organizational conflict of interest exists when the nature of the work to be performed under the contract may, without some form of restriction on future activities; result in an unfair competitive advantage to the Contractor.

(i) The Contractor shall have access to confidential and/or sensitive Authority information in the course of contract performance. Additionally, the Contractor may be provided access to proprietary information obtained from other contracted entities during contract performance. The Contractor agrees to protect all such information from disclosure unless so authorized, in writing, by the Authority and to refrain from using such information for any purpose other than that for which it was furnished.

(ii) To the extent that the Contractor either (a) uses confidential and/or sensitive Authority information or proprietary information obtained from other Authority contractors to develop any form of document, report, or plan that is determined by the Authority to be the basis, in whole or in part, of any subsequent solicitation issued by the Authority or (b) develops written specifications that are used in any subsequent solicitation issued by the Authority, the Contractor agrees that it shall not be eligible to compete for such subsequent solicitation(s) as a prime or principal contractor or as part of any teaming arrangement unless the Authority provides, in writing, a specific waiver of this restriction. The duration of any restriction imposed under this subparagraph shall not exceed the length of the initial performance period of any subsequently awarded contract for which the Contractor was ineligible to compete.

B. The Contractor, by submitting its bid or proposal, agrees to the above stated conditions and terms and further agrees to perform all duties under the contract and, in doing so, not to enter into contractual agreements with Authority prime contractors and first-tier subcontractors in such a way as to create an organizational conflict of interest.

C. If the Authority determines that the Contractor has violated any term of this numbered clause, the Authority may take any appropriate action available under the law or regulations to obtain redress to include, but not be limited to, requiring the Contractor to terminate any affiliation or contractual arrangement with an Authority prime contractor or first-tier subcontractor at no cost to the Authority; determining the Contractor ineligible to compete for or be awarded any subsequent or “follow-on” contracts that may be based upon the Contractor’s actions under this Contract or violations of this numbered clause, or terminating this Contract, in whole or in part.

#### 4. ACCESS TO RECORDS AND REPORTS

The Contractor agrees to provide the Authority, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to and the right to examine and inspect any books, documents, papers and records of the Contractor which are directly pertinent to this Contract for the purposes of making audits, examinations, excerpts and transcriptions. The Contractor also agrees, pursuant to 49 CFR 633.15 to provide the FTA Administrator or his authorized representatives including any PMO Contractor access to the Contractor's records and construction sites pertaining to the project.

The Contractor shall make available records related to the contract to the Authority, the Secretary of Transportation and the Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.

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

The Contractor agrees to maintain all books, records, accounts and reports required under this Contract for a period of not less than three (3) years after final payment is made by the Authority and all other pending matters are closed, except in the event of litigation or settlement of claims arising from the performance of this Contract, in which case the Contractor agrees to maintain same until the Authority, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto.

This requirement is independent of the Authority's requirements for record retention contained elsewhere in the contract documents.

## 5. CIVIL RIGHTS

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

B. Equal Employment Opportunity - The following equal employment opportunity requirements apply to the underlying contract:

1. Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 *et seq.*, (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination;

rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

2. Age - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 623, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

3. Disabilities - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of

U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

C. The Contractor also agrees to include these requirements in each subcontract related to this project, modified only if necessary to identify the affected parties.

6. CARGO PREFERENCE – USE OF UNITED STATES FLAG VESSELS – If this Contract involves equipment, materials, or commodities that may be transported by ocean vessels, the Contractor herein agrees:

a. To utilize privately owned United States-flag commercial vessels to ship at least fifty percent (50%) of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to this Contract, to the extent such vessels are available at fair and reasonable rates for United States-flag commercial vessels.

b. To furnish within twenty (20) days following the date of loading for shipments originating within the United States or within thirty (30) working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in paragraph (1) above to the FTA Administrator and grantee (through the prime contractor in the case of subcontractor bills-of-lading) and to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20230.

c. To include these requirements in all subcontracts issued pursuant to this Contract when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.

7. ENERGY CONSERVATION – The Contractor agrees to comply with the mandatory energy efficiency standards and policies within the applicable State energy conservation plans issued in compliance with the Energy Policy and Conservation Act, 42 U.S.C. §6321 *et seq.* The Contractor also agrees to ensure that all work performed under this Contract including work performed by a Subcontractor is in compliance with the requirements of this Section.

8. FLY AMERICA – The Contractor agrees to comply with 49 U.S.C. 40118 (the "Fly America" Act) in accordance with the General Services Administration's regulations at 41 CFR Part

301-10, which provide that subrecipients of Federal funds and their contractors are required to use U.S. Flag air carriers for U.S. Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. The Contractor shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a U.S. flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. The Contractor agrees to include the requirements of this section in all subcontracts that may involve international air transportation.

9. PREFERENCE FOR RECYCLED PRODUCTS – The Contractor agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recover Act (RCRA), as amended (42 U.S.C. 6962), including but not limited to the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247. The Contractor also agrees to include the requirements of this Clause in all subcontracts exceeding \$10,000 for items designated by the Environmental Protection Agency (EPA) and issued pursuant to this Contract.

#### 10. Energy Conversation

The Contractor agrees to comply with the mandatory energy efficiency standards and policies within the applicable State energy conservation plans issued in compliance with the Energy Policy and Conservation Act, 42 U.S.C. §6321 et seq and the National Environmental Policy Act, 42 U.S.C. §4321 et seq. Accordingly, the Contractor agrees that the construction of any new building, or any addition, alteration or renovation of any existing building which materially increases the heating or cooling requirements for the building will comply with mandatory standards and policies relating to energy efficiency which are contained in 42 USC §6321 et seq., Article 11 of the New York State Energy Law and in Parts 7810 to 7815 of Title 9, Subtitle BB of the New York Codes, Rules and Regulations. The Contractor also agrees to ensure that all work performed under this Contract including work performed by a Subcontractor is in compliance with the requirements of this Section.

#### 11. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS

A. The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 *et seq.* and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 CFR Part 31, apply to its actions pertaining to this Project. The Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the contract or project. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.

B. The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government

under this Contract, financed in whole or in part with Federal assistance, the Federal Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate.

C. The Contractor agrees to include the above two clauses in each subcontract related to this Contract. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

#### 12. CERTIFICATION, DEBARMENT AND SUSPENSION

– This contract is a covered transaction for purposes of 2 CFR parts 180 and 1200. As such, the contractor is required to verify that none of the contractor, its principals, as defined at 2 CFR 180.995, or affiliates, as defined at 2 CFR 180.905, are excluded or disqualified as defined at 2 CFR 180.935 and 180.940. The Contractor is required to comply with 2 CFR 180, Subpart C and must include the requirement to comply with 2 CFR 180, Subpart C in any lower tier covered transaction it enters into.

By signing and submitting its bid, the bidder certifies as follows: The certification in this clause is a material representation of fact relied upon by the Port Authority of New York and New Jersey. If it is later determined that the bidder knowingly rendered an erroneous certification, in addition to remedies available to the Port Authority of New York and New Jersey, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder agrees to comply with the requirements of 2 CFR 180, Subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder further agrees to include a provision requiring such compliance in its lower tier covered transactions.

#### 13. VETERANS EMPLOYMENT

Contractors working on a capital project funded using such assistance agrees to give a hiring preference, to the extent practicable, to veterans (as defined in 5 U.S.C. 2108) who have the requisite skills and abilities to perform the construction work required under the contract. This subsection shall not be understood, construed or enforced in any manner that would require an employer to give a preference to any veteran over any equally qualified applicant who is a member of any racial or ethnic minority, female, an individual with a disability, or a former employee. The Contractor shall ensure that its hiring practices reflect the requirements of this section and shall, upon request, provide to the Authority personnel data which reflects compliance with the terms contained herein.

14. ADA ACCESS REQUIREMENTS - Facilities to be used in public transportation service must comply with 42 U.S.C. Sections 12101 et seq. and DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 CFR Part 37; and Joint ATBCB/DOT regulations, "Americans with Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 36 CFR Part 1192 and 49 CFR Part 38.

The undersigned Bidder has satisfied the requirements of the Contract in the following manner (Complete the appropriate spaces and check one box):

The Bidder is committed to meeting the DBE goal set forth in this Contract.

OR

The Bidder is unable to meet the DBE goal set forth in this Contract, but is committed to a minimum of \_\_\_\_\_% DBE utilization on this Contract and submits the attached narrative and documentation demonstrating good faith efforts consistent with Appendix A of 49 CFR 26 to meet the DBE utilization goal set forth in this Contract. Attach as many pages as necessary to provide a full and complete narrative and supporting documentation of good faith efforts made. This narrative shall be submitted on company letterhead and signed.

It is the present intent of the Bidder to utilize the specific DBE firms identified in Appendix A2 in the performance of the Work under this Contract. If for any reason, one or more of the DBE firms identified in Appendix A2 are unable or unwilling to participate, the Bidder will make good faith efforts to replace the DBE firm with another DBE firm in accordance with the Information For Bidders clause entitled "Disadvantaged Business Enterprise Program (DBE)".

I \_\_\_\_\_ (print name), an officer of \_\_\_\_\_ (company name), certify that I have read the Appendix A1 – DBE Goals Statement and the information contained in it is true. I fully understand that any false statement within this submittal may prevent the company and/or the undersigned from being found to be responsible bidders/proposers in connection with future agreements. In addition, any false statement within this submittal may subject the company and/or the undersigned to criminal charges in the state and federal courts of New York and New Jersey.

Signature \_\_\_\_\_ Title \_\_\_\_\_ Date \_\_\_\_\_

**Officer must have ACKNOWLEDGEMENT BY NOTARY PUBLIC completed on the reverse side.**

**ACKNOWLEDGMENT BY NOTARY PUBLIC**

**APPENDIX A1 – DBE GOALS STATEMENT (reverse)**

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

On the \_\_\_\_\_ day of \_\_\_\_\_ in the year 20\_\_\_\_, before me, the above undersigned, personally appeared \_\_\_\_\_, the \_\_\_\_\_, of \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity.

Name of Notary (print) \_\_\_\_\_

(Affix Notary Stamp Here)

My Commission Expires \_\_\_\_\_

(Notary Signature)

\_\_\_\_\_  
(Date)

**APPENDIX A2: DBE PARTICIPATION PLAN AND AFFIRMATION STATEMENT PA 3752B / 3-16**

Instructions: Submit one DBE PARTICIPATION PLAN AND AFFIRMATION STATEMENT form for each DBE firm used on this Contract.

**CONTRACT NUMBER AND TITLE:** \_\_\_\_\_

**BIDDER:**

Name of Firm: \_\_\_\_\_

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

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

**DBE:**

Name of Firm: \_\_\_\_\_

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

Description of work to be performed by DBE: \_\_\_\_\_

Calculation (supply only): \_\_\_\_\_

The Bidder is committed to utilizing the above-named DBE for the work described above. The estimated dollar value of this work is \$ \_\_\_\_\_ or \_\_\_\_\_ % of the total contract amount of \$ \_\_\_\_\_. The anticipated start date is \_\_\_\_\_ and the anticipated completion date is \_\_\_\_

**AFFIRMATION of DBE**

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

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

Signature of Principal or Officer of DBE - Print Name and Title

If the Bidder does not receive award of the Contract, any and all representations in this DBE Participation Plan and Affirmation Statement shall be null and void.

I \_\_\_\_\_ (print name), an officer of \_\_\_\_\_ (company name), certify that I have read the Appendix A2 – DBE Participation Plan and Affirmation Statement and the information contained in it is true. I fully understand that any false statement within this submittal may prevent the company and/or the undersigned from being found to be responsible Bidders/Proposers in connection with future agreements. In addition, any false statement within this submittal may subject the company and/or the undersigned to criminal charges in the state and federal courts of New York and New Jersey.

Signature of Bidder \_\_\_\_\_ Title \_\_\_\_\_ Date \_\_\_\_\_

Please Note: Only 60% of the expenditure to a DBE material supplier will be counted toward the DBE goal. Please show calculation above. Example: \$100,000 x 60% = \$60,000 estimated DBE dollar value of work. Plan cannot be accepted without calculation.

**Officer of the Bidder must have ACKNOWLEDGEMENT BY NOTARY PUBLIC completed on the reverse side.**

**ACKNOWLEDGMENT BY NOTARY PUBLIC**

**APPENDIX A2  
DBE PARTICIPATION PLAN AND AFFIRMATION STATEMENT (reverse)**

STATE OF \_\_\_\_\_)

S.S.:

COUNTY OF \_\_\_\_\_)

On the \_\_\_ day of \_\_\_\_\_ in the year 20\_\_ , before me, the above undersigned, personally appeared \_\_\_\_\_, the \_\_\_\_\_, of \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity.

Name of Notary (print) \_\_\_\_\_

(Affix Notary Stamp Here)

My Commission Expires \_\_\_\_\_

(Notary Signature)

\_\_\_\_\_

(Date)

**OFFICE OF BUSINESS DIVERSITY AND CIVIL RIGHTS**

**APPENDIX A3: MODIFIED DBE PARTICIPATION PLAN AND AFFIRMATION STATEMENT** PA 4242 / 06-16

Instructions: Submit one MODIFIED DBE PARTICIPATION PLAN AND AFFIRMATION STATEMENT form for each DBE firm used on this Contract. To avoid undue repetition, the following terms, as used in this Agreement, shall be construed as follows: Bidder/Proposer/Respondent - can be used interchangeably and signify any Contractor, Consultant, Supplier, or Vendor who submits a response to this solicitation.

**CONTRACT NUMBER AND TITLE:** \_\_\_\_\_

**BIDDER:**

Name of Firm: \_\_\_\_\_

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

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

**DBE:**

Name of Firm: \_\_\_\_\_

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

Description of work to be performed by DBE: \_\_\_\_\_

Calculation (supply only): \_\_\_\_\_

The Bidder is committed to utilizing the above-named DBE for the work described above. The estimated dollar value of this work is \$ \_\_\_\_\_ or \_\_\_\_\_% of the total contract amount of \$ \_\_\_\_\_. The anticipated start date is \_\_\_\_\_ and the anticipated completion date is \_\_\_\_\_.

**AFFIRMATION of DBE**

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

By: \_\_\_\_\_  
**Signature** of Principal or Officer of DBE – Print Name and Title Date

If the Bidder does not receive award of the Contract, any and all representations in this Modified DBE Participation Plan and Affirmation Statement shall be null and void.

I \_\_\_\_\_ (print name), an officer of \_\_\_\_\_ (company name), certify that I have read the Appendix A3 Modified DBE Participation Plan and Affirmation Statement and the information contained in it is true. I fully understand that any false statement within this submittal may prevent the company and/or the undersigned from being found to be responsible Bidders/Proposers in connection with future agreements. In addition, any false statement within this submittal may subject the company and/or the undersigned to criminal charges in the state and federal courts of New York and New Jersey.

Signature of Bidder \_\_\_\_\_ Title \_\_\_\_\_ Date \_\_\_\_\_

Please Note: Only 60% of the expenditure to a DBE material supplier will be counted toward the DBE goal. Please show calculation above. Example: \$100,000 x 60% = \$60,000 estimated DBE dollar value of work. Plan cannot be accepted without calculation.

**Officer of Bidder must have ACKNOWLEDGEMENT BY NOTARY PUBLIC completed on the reverse side.**

**ACKNOWLEDGMENT BY NOTARY PUBLIC**

**APPENDIX A3  
MODIFIED DBE PARTICIPATION PLAN AND AFFIRMATION STATEMENT (reverse)**

STATE OF \_\_\_\_\_ )  
COUNTY OF \_\_\_\_\_ )SS:

On the \_\_\_\_\_ day of \_\_\_\_\_ in the year 20\_\_\_\_\_, before me, the above undersigned, personally appeared \_\_\_\_\_, the \_\_\_\_\_, of \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity.

Name of Notary (print) \_\_\_\_\_

(Affix Notary Stamp Here)

My Commission Expires \_\_\_\_\_

\_\_\_\_\_  
Notary Signature

\_\_\_\_\_  
(Date)



**ACKNOWLEDGEMENT BY NOTARY PUBLIC**

**APPENDIX A4  
INFORMATION ON SOLICITED FIRMS (reverse)**

STATE OF \_\_\_\_\_)

S.S.:

COUNTY OF \_\_\_\_\_)

On the \_\_\_ day of \_\_\_\_\_ in the year 20\_\_ , before me, the above undersigned, personally appeared \_\_\_\_\_, the \_\_\_\_\_, of \_\_\_\_\_ , personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity.

Name of Notary (print) \_\_\_\_\_

(Affix Notary Stamp Here)

My Commission Expires \_\_\_\_\_

(Notary Signature)

\_\_\_\_\_  
(Date)

**APPENDIX A5: PRE-AWARD DBE TRUCKING COMMITMENT FORM PA 3751A / 06-16**

**INSTRUCTIONS:**

A LOW BIDDER THAT SUBMITS A DBE PARTICIPATION PLAN THAT INCLUDES AMOUNT(S) FOR TRUCKING MUST COMPLETE THIS FORM TO SHOW HOW THE COMMITMENT AMOUNT WAS ESTIMATED. THIS FORM IS TO BE ATTACHED TO THE REQUIRED "DBE PARTICIPATION PLAN AND AFFIRMATION STATEMENT (APPENDIX A2)" FOR FEDERALLY FUNDED CONTRACTS.

PRIME CONTRACTORS UTILIZING DBE FIRMS WITH A "TRUCKING" CLASSIFICATION TO MEET DBE CONTRACT GOALS MUST BE AWARE THAT CERTAIN CONDITIONS MUST BE MET BY THE DBE TRUCKING FIRM IN ORDER TO BE CONSIDERED COMMERCIALY USEFUL. THESE CONDITIONS DIRECTLY AFFECT HOW MUCH PARTICIPATION CREDIT WILL BE COUNTED TOWARD THE GOAL. FOR DBE CREDIT, THESE CONDITIONS ARE OUTLINED UNDER CFR PART 26.55(d) (1) THROUGH (7).

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

- The DBE must be responsible for the management and supervision of the entire trucking operation for which it is responsible on a particular contract, and there cannot be a contrived arrangement for the purpose of meeting DBE goals.
- The DBE must itself own and operate at least one fully licensed, insured and operational truck used on the contract.
- The DBE receives credit for the total value of the transportation services it provides on the contract using trucks it owns, insures, and operates, using drivers it employs.
- The DBE may lease trucks from another DBE firm, including an owner-operator who is certified as a DBE. The DBE who leases trucks from another DBE receives credit for the total value of the transportation services the lessee DBE provides on the contract.
- The DBE may also lease trucks from non-DBE firms and owner-operators. The DBE can count the value of these trucking services up to the value of services performed by the DBE trucks used on the contract. DBE participation can be counted for the value of services of non-DBE trucks that exceed the value of services performed by DBE trucks only in the amount of the fee or commission a DBE receives as a result of the lease arrangement.
- A lease must indicate that the DBE has exclusive use of and control over the truck for the period of the subcontract. This does not preclude the leased truck from working for others during the term of the lease with the consent of the DBE, so long as the lease gives the DBE absolute priority for use of the leased truck

FILL OUT THE INFORMATION ON PAGE 2 FOR EACH DBE TRUCKING FIRM UTILIZED.

MAKE ADDITIONAL COPIES FOR EACH DBE TRUCKING FIRM USED ON THE CONTRACT.

**PRE-AWARD DBE TRUCKING COMMITMENT INFORMATION**

DATE: \_\_\_\_\_ CONTRACTOR NAME: \_\_\_\_\_

CONTRACT NUMBER: \_\_\_\_\_ TELEPHONE: \_\_\_\_\_

NAME OF DBE TRUCKING FIRM: \_\_\_\_\_

SCOPE OF WORK OF TRUCKING FIRM: \_\_\_\_\_

SUPERVISOR OF THE DAY-TO-DAY DBE TRUCKING OPERATION: \_\_\_\_\_

NUMBER OF TRUCKS \_\_\_\_\_ + \_\_\_\_\_ = \_\_\_\_\_  
OWNED LEASED TOTAL

NUMBER OF TRUCKS  
PERFORMING WORK \_\_\_\_\_

\_\_\_\_\_ X \_\_\_\_\_ = \_\_\_\_\_  
RATE PER DURATION/NUMBER COMMITMENT

LIST THE PROPER PERMITS REQUIRED TO BE RETAINED BY THE FIRM FOR THE WORK FOR WHICH IT IS BEING HIRED. \_\_\_\_\_

DOES/WILL THE DBE FIRM HAVE OR BE ABLE TO RETAIN THE PROPER PERMITS REQUIRED TO PERFORM THE WORK FOR WHICH IT IS BEING HIRED? YES \_\_\_\_\_ NO \_\_\_\_\_ IF NO, FIRM CANNOT BE UTILIZED.

FOR ANY LEASED TRUCK, SUBMIT A COPY OF THE LEASE AGREEMENT.

SIGNATURE OF PRINCIPAL OR OFFICER OF TRUCKING FIRM: \_\_\_\_\_

PRINT NAME: \_\_\_\_\_ TITLE: \_\_\_\_\_

I \_\_\_\_\_ (print name), an officer of \_\_\_\_\_ (company name), certify that I have read the Pre-Award DBE Trucking Commitment Information and the information contained in it is true. I fully understand that any false statement within this submittal may prevent the company and/or the undersigned from being found to be responsible bidders/proposers in connection with future agreements. In addition, any false statement within this submittal may subject the company and/or the undersigned to criminal charges in the state and federal courts of New York and New Jersey.

Signature \_\_\_\_\_ Title \_\_\_\_\_ Date \_\_\_\_\_

**Officer must have ACKNOWLEDGEMENT BY NOTARY PUBLIC completed on the reverse side.**

**ACKNOWLEDGMENT BY NOTARY PUBLIC**

**APPENDIX A5  
PRE-AWARD DBE TRUCKING COMMITMENT INFORMATION (reverse)**

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

On the \_\_\_ day of \_\_\_\_\_ in the year 20\_\_\_, before me, the above undersigned, personally appeared \_\_\_\_\_, the \_\_\_\_\_, of \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity.

Name of Notary (print) \_\_\_\_\_

(Affix Notary Stamp Here)

My Commission Expires \_\_\_\_\_

(Notary Signature)

\_\_\_\_\_  
(Date)

**APPENDIX A6: DBE REGULAR DEALER VERIFICATION FORM**

**PA 3750A / 06-16**

(To be completed by DBE firm and signed by Prime Contractor)

Project Number:	Telephone # of Prime
Prime Contractor:	
DBE Firm:	
Provide a brief description of the material(s) your firm will be supplying and the Prime is requesting be credited as a regular dealer (including item numbers and estimated quantities when possible).	
If either question is marked 'No', then the Prime cannot receive regular dealer credit for the services provided by the DBE firm. Instead, the maximum credit that could be received would be the fee or commission the DBE firm receives for its services. Before executing this form, read the attached 'Guide for Counting DBE Suppliers' which includes the official question and answer issued by the United States Department of Transportation.	
	Yes      No
1. Does your firm "regularly" engage in the purchase and sale or lease, to the general public in the usual course of its business, of product(s) of the general character which will be involved in this contract and for which DBE credit is being sought? . . . . .	
2. Is the role your firm will play on this specific contract consistent with the regular sale or lease of the product(s) in question, as distinct from a role better understood as that of a broker, packager, manufacturer's representative, or other person who arranges or expedites a transaction? . . . . .	
<b>Authorized Representative of DBE Firm</b>	
The undersigned individual hereby verifies that he/she is authorized to make this verification on behalf of the DBE firm, that the DBE firm "regularly" engages in the purchase and sale or lease of the items listed herein and is not otherwise a packager, broker, manufacturer's representative, or other person who arranges or expedites transactions, that the answers and information provided herein are true and correct to the best of her/his knowledge, information and belief and any false statement made in this verification may be the basis for prosecution for offering a false instrument for filing (see e.g., New York Penal Law, Section 175.30 et. Seq.).	
_____ Signature of Principal or Officer	_____ Date
_____ Print Name and Title	_____ Phone Number
<b>Authorized Representative of Prime Contractor</b>	
The undersigned individual hereby verifies that he/she is authorized to make this verification on behalf of the prime contractor, that, to the best of his/her knowledge, information and belief the DBE firm 'regularly' engages in the purchase and sale or lease of the items listed herein and is not otherwise a packager, broker, manufacturers' representative, or other person who arranges or expedites transactions.	
I, Signature of Principal or Officer _____ Date _____	
_____ an officer of _____	
Print Name and Title	Company
certify that I have read the DBE Regular Dealer Verification Form and the information contained in it is true. I fully understand that any false statement within this submittal may prevent the company and/or the undersigned from being found to be responsible bidders/proposers in connection with future agreements. In addition, any false statement within this submittal may subject the company and/or the undersigned to criminal charges in the state and federal courts of New York and New Jersey.	
<b>Officer must have ACKNOWLEDGEMENT BY NOTARY PUBLIC completed on the reverse side.</b>	



## GUIDE FOR COUNTING DBE SUPPLIERS

- The official question and answer (Q & A) issued by the United States Department of Transportation on December 9, 2011 as institutional guidance based on 49 C.F.R. § 26.55 relative to regular dealers poses two questions that must both be answered ‘yes’ in order for the DBE firm to receive regular dealer credit equivalent to 60 percent of the value for materials supplied on federally-assisted transportation projects.
- Following is the official Q & A in italics:
  - First, does the firm “regularly” engage in the purchase and sale or lease, to the general public in the usual course of its business, of products of the general character involved in the contract and for which DBE credit is sought?*
    - *Answering this question involves attention to the activities of the business over time, both within and outside the context of the DBE program.*
    - *The distinction to be drawn is between the regular sale or lease of the products in question and merely occasional or ad hoc involvement with them.*
    - *In answering this question, [the Port Authority of NY and NJ] will not insist that every single item the DBE firm supplies be physically present in the firm’s store, warehouse, etc. before it is sold to a contractor. However, the establishment in which the firm keeps items it sells to the general public should be more than a token location.*
    - *For example, a mere showroom, the existence of a hard-copy or on-line catalog, or the presence of small amounts of material that make questionable the ability of the firm to effectively supply quantities typically needed on a contract, are generally not sufficient to demonstrate that a firm regularly deals in the items.*
  - Second, is the role the firm plays on the specific contract in question consistent with the regular sale or lease of the products in question, as distinct from a role better understood as that of a broker, packager, manufacturer’s representative, or other person who arranges or expedites a transaction?*
    - *For example, a firm that regularly stocks and sells Product X may, on a particular contract, simply communicate a prime contractor’s order for Product Y to the manufacturer, acting in a transaction expeditor capacity.*
    - *This means that a firm that acts as a regular dealer on one contract does not necessarily act as a regular dealer on other contracts. For example, a firm that acts as a regular dealer on Contract #1 may act simply as a “transaction expeditor” or “broker” on Contract #2. It would receive DBE credit for 60 percent of the value of the goods supplied on Contract #1 while only receiving DBE credit for its fee or commission on Contract #2.*
    - *In some circumstances, items are “drop-shipped” directly from a manufacturer’s facility to a job site, never being in the physical possession of or transported by a supplier. In many such cases, the supplier’s role may involve nothing more than contacting the manufacturer and placing a job-specific order for an item that the manufacturer then causes to be transported to the job site.*
    - *In such a situation, the supplier’s role may often be better described as that of a “broker” or “transaction expeditor” (see 49 C.F.R. § 26.55(e)(2)(ii)(C)) than as a “regular dealer.” In such a case, DBE credit is limited to the fee or commission the firm receives for its services. If the firm does not provide any commercially useful function (i.e., it is simply inserted as an extra participant in a transaction), then no DBE credit can be counted.*
- The Port Authority of NY and NJ propose that primes submit the two questions to DBEs in writing. If the DBE firm answers ‘yes’ to both questions, then the written documentation would be taken into account in the Port Authority of NY and NJ’s good faith effort determination in accordance with Section 26.53 of the federal DBE regulation set forth in Title 49 Code of Federal Regulations Part 26.
- If it were later determined that the DBE misrepresented itself or erroneously concluded that it was acting as a regular dealer, the Port Authority of NY and NJ would strongly consider this documentation in evaluating the actions of the prime and in determining whether the prime exercised reasonable due diligence by obtaining a written regular dealer confirmation from the DBE even though it later turned out to be false.
- Participation would still have to be revised, but the Port Authority of NY and NJ will fully consider the written documentation in its good faith effort review.
- The Port Authority of NY and NJ reserves the right to address any misrepresentation by the DBE firm or the prime consistent with the “Bidders Certification Statement” and other requirements and procedures for determinations of whether a contractor has acted responsibly.