REQUEST FOR QUOTATION

Collective# 0000050753  Bid Due Date 09/14/2017
Bids must be received no later than 11:00 AM on the above Bid Due Date.

Deliver Goods/Services To:
PA Auto Marine Terminal
Bayonne 00001

Contact person/Telephone/Email
Shanta Nelson/212-435-4661/snelson@panynj.gov

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<td></td>
<td>SUPPLY AND DELIVER SWING CRANE W/RAIL GEAR EQUIPMENT - PATH</td>
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<td>NOTE: These items may be federally fund 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.</td>
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<td>Delivery to: Port Authority of New York &amp; New Jersey Central Automotive Shop 777 Jersey Avenue Jersey City, NJ 07310 Attn: Mr. Ron Westervelt</td>
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<td>THIS IS A FORMAL BID INVITATION</td>
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<td>I. 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:</td>
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<td>A. Specifications for: Swing Crane w/ Rail Gear Equipment 1. Appendix A Vendor Detail Sheet a) Appendix A1: PATH Track Features - Tunnel and Outside Areas b) Appendix A2 - PATH Track Features - Location of Contact</td>
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PLEASE QUOTE FULLY DELIVERED PRICES

PAYMENT TERMS

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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

Certified

Signature

Date

Firm Name

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<td>c) Appendix A3 - PATH Track Features - Elevation of Contact Rail</td>
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<td>d) Appendix A4 - PATH Track Features - Automatic Train Stop Tripper Arm</td>
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<td>2. Appendix B Vendor Detail Sheet</td>
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<td>3. Appendix C: Pricing Sheet</td>
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<td>4. Appendix D: Automotive Procurement Standard Contract Terms and Conditions</td>
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II. The following additional items are bid submittal requirements contained within the Federal Transit Administration (FTA) Requirements and/or solicitation documents:

B. Attachment A-1: Disadvantaged Business Enterprise (DBE) Program
C. Appendix A1: DBE Goals Statement
D. Appendix A2: DBE Participation Plan and Affirmation Statement
E. Appendix A4: Information on Solicited Firms
F. Appendix A3: Pre-Award DBE Trucking Commitment Form
G. Appendix A6: DBE Regular Dealer Verification Form
H. Buy America Certification (Rolling Stock)
I. Certification Regarding Lobbying Pursuant to 31 U.S.C. 1352

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<td>J.</td>
<td>Standard Form LLL, Disclosure of Lobbying Activities</td>
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<td>K.</td>
<td>Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion -</td>
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<td>L.</td>
<td>Lower Tier Covered Transactions</td>
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NOTE: Appendix A-3: Modified DBE Participation Form and Affirmation Statement, is neither included with this solicitation nor required at the time of Bid submission.

III. Additional Bid Submission Requirement: Bidders shall submit with their Bids one (1) copy of any proposed drawing, specification sheet, or other documentation on the proposed product that is sufficient to facilitate an evaluation by PATH.

IV. Background Qualification Questionnaire (BQQ)

The Bidder shall submit a completed Background Qualification Questionnaire (BQQ), required for itself and all subcontractors and vendors known to the Bidder at the time of bid submission. This document and instructions for submitting the completed BQQ to the Authority’s Office of Inspector General can be obtained at the Authority’s website through the following link:

http://www.panynj.gov/inspector-general/inspector-general-programs.html

An award will be made to the lowest, responsive and responsible bidder.

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<td>An award will be made to the lowest, responsive and responsible bidder. In the event of a Purchase Order/Contract resulting from this Bid, the Contractor shall deliver within the longest quoted Lead Time.</td>
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<td>The Purchase Order/Contract shall expire no later than ninety (90) days from the longest quoted Lead Time.</td>
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<td>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.</td>
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<td>following address by the due date and time listed on this Request for</td>
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<td>Quotation, where they will be publicly opened and read:</td>
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<td>Attn: Bid Custodian</td>
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<td>150 Greenwich Street, 21st Floor</td>
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Signed ____________________________
Firm Name __________________________
Telephone number ___________ Date ______
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<td>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. There is no parking available at 4 WTC/150 Greenwich Street, and parking in the surrounding area is extremely limited. The Port Authority assumes no responsibility for delays, including, but not limited to delays caused by any delivery service, building access procedure or security requirement. A valid government-issued photo ID is required to gain access into the building to attend the bid opening or hand deliver a bid. Bids that are not received by the bid custodian by the scheduled bid opening date 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. If the Bidder downloaded this solicitation document, it is the responsibility of the Bidder to periodically check the Port Authority website at</td>
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Payment Terms

Please quote fully delivered prices

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<td><a href="http://www.panynj.gov/business-opportunities/bid-proposaladvertsements.html">http://www.panynj.gov/business-opportunities/bid-proposaladvertsements.html</a> and download any addenda that might have been issued in connection with this solicitation.</td>
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<td>SWING CRANE W/RAIL GEAR EQUIPMENT</td>
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Firm Name __________________________
SPECIFICATIONS FOR:

SWING CRANE WITH RAIL GEAR EQUIPMENT

These specifications cover the furnishing of the latest production model Swing Crane loader, as described in the following specifications.

The Vendor shall furnish, install and deliver the equipment and accessory items defined below. The equipment shall be designed and certified to operate in accordance with all regulatory requirements as specified within these specifications, and Federal, State of New York, State of New Jersey, and City of New York laws and regulations.

The unit and associated components, features, and equipment shall be furnished complete and ready for use, all as more fully required by the terms of these specifications and in strict accordance therewith, even if not specifically enumerated in these specifications. The unit and all equipment shall be the manufacturer’s latest current published stock model(s), which meet the requirements of these specifications.

SPECIFICATIONS

1. GENERAL

The Vendor shall furnish and install the following equipment and accessory items as defined below. The vehicle shall be four-wheel drive (4WD) equipped with high rail gear to be used for rail maintenance and material handling. This vehicle will be used on the Port Authority Trans Hudson (PATH) lines and shall be capable of operating where there is a third rail. It shall be designed and manufactured for this purpose.

Bids shall be submitted in duplicate. The vendor shall submit with its bid a completed Vendor’s Detail Sheet (provided at the end of the specifications) and all other brochures, data sheets, catalogues, drawings, and technical information necessary to perform a complete product evaluation also submitted in duplicate.

The Vendor shall complete the bid pricing sheet, Appendix C. The vendor is to list the pricing for the cost of the swing loader and any options that may be listed for information only. The bid will be evaluated by the “total bid price.”
Performance

- On tires – 10,000 lbs front and 8,000 lbs side
- On Hi-Rail – 10,000 lbs front and 5,400 lbs side

NOTE: All dimensions used throughout this specification are U.S. Standard Units (i.e. Inches, Pounds, etc.).

2. CAB-CHASSIS

These specifications cover the furnishing of the latest production model Swing Crane with an enclosed Roll Over Protection Structure (ROPS) steel cab as specified below with all manufacturer’s standard equipment. The vehicle shall be capable of both day and night operation as well as operating on the PATH system’s rails and in its tunnels.

3. ENGINE

The engine shall be a turbo diesel engine certified to the EPA’s Tier IV Final Emission Standard for non-road vehicles. The engine must meet the following minimum specifications:

- One hundred and sixty (160) gross Horse Power (HP) at governed Revolutions Per Minute (RPM)
- Four (4) cycle diesel
- Variable geometry turbocharger

The engine must meet the EPA’s Tier IV Final Emission standard for non-road vehicles without the use of a Diesel Particulate Filter (DPF) in its exhaust system that could require a regeneration cycle. An exhaust muffler, located as close as possible to the engine, shall be provided. Exhaust shall not be directed at ceiling or walls of tunnel. At the time the exhaust system needs to recharge, the system shall notify the operator to either accept the notice or postpone it. This is required so that if the exhaust indicates that regeneration is required while the Crane is operating in the tunnel, the process can be postponed until after the Crane is out of the tunnel.

The diesel engine shall be capable of operating using B20 diesel fuel that complies with the latest version of ASTM D6751. The fuel system shall be equipped with a heated fuel water separator.

The engine shall be equipped with the following:

- Cooling system, heavy duty, 50/50 mix of antifreeze and water to -40°F
- 110 VAC Engine Block Heater
- Heavy duty vertical exhaust muffler
- Muffler heat shield
- Engine shutdown system with an automatic override, and have a visual and audible warning for:
  - Low oil pressure
  - High engine temperature
The vehicle shall be equipped with the manufacturer’s standard cold start aid for starting at ambient temperatures to zero (0°) degrees Fahrenheit. Ether cold start aid shall not be acceptable. The vehicle shall be equipped with the manufacturer’s standard instrumentation and warning indicators. All controls, instrumentation and indicators shall be installed for ease of operation and be fully illuminated.

4. ENGINE - NOISE

The vehicle shall conform to federal, state, and local noise codes. The sound level at the operator’s position shall not exceed 83 dB(A).

5. MINIMUM TRANSMISSION

The vehicle shall be equipped with a fully automatic multi-speed PowerShift transmission with torque converter or PATH approved equal. The drive shall have a rear wheel disconnect and hi/low range capability. The transmission shall be three (3) speed with high and low range with a twist grip electric shift control

6. STEERING

The vehicle shall be equipped a fully hydraulic power steering system acting on all four (4) wheels. The hydraulic pump shall be fully equipped with all the necessary components for proper performance. All steering controls for steering shall be locked out while operating on its hi-rail gear.

It shall be possible to turn the steering wheel lock-to-lock with one (1) hand with the vehicle stopped on hard surface pavement, engine idling, at maximum gross weight.

7. BRAKES

The vehicle shall be equipped with a hydraulic over hydraulic outboard dry disc brake system with a manual parking brake conforming to current federal and state requirements.

The vehicle shall be equipped with an air brake system for controlling the brakes of rail cars and buggies. The air brake system shall be controlled and modulated by the vehicles primary braking system. Connections for buggy brakes and glad hands shall be provided front and rear. Included shall be an air dryer, Front Axle

The vehicle shall be equipped with an oscillating front axle assembly conforming to the following minimum specifications:

- 50,000 LB. Gross Axle Weight Rating (GAWR)
- 14:00 X 24, 12 PR Tires, Foam-Filled

A spare tire (foam filled) mounted on a rim shall be supplied.
8. REAR AXLE AND SUSPENSION

The vehicle shall be equipped with an oscillating single rear axle assembly with manual lockout conforming to the following minimum specifications:

- 50,000 LB Gross Axle Weight Rating (GAWR)
- Ratio to provide speed of sixty (60) Miles Per Hour at governed engine Rotations Per Minute (RPM)
- Rear axle disconnect
- 14:00 X 24, 12 PR Tires, Foam-Filled
- Tires must clear PATH tripper arm by a minimum of one and one half (1 1/2”) inch, see Appendix A.

9. FRAME

The vehicle shall be equipped with a chassis frame of suitable strength and rigidity to allow operation at maximum Gross Vehicle Weight (GVW) for on/off-highway operations.

10. CAB

The vehicle shall be equipped with a manufacturer’s fully enclosed Roll Over Protection Structure (ROPS) cab and full vision windshield. All glass shall be safety glass. It shall hydraulically tilt for access to all machine components. It shall include two (2) seating positions, driver and jump seat, and shall be equipped with the manufacturer’s standard equipment for day and night operation.

All controls, instrumentation, indicators and switches shall be installed for ease of operation, be fully illuminated, and labeled.

The cab shall include the following:

- Left and right side entry doors
- Cab doors windows shall raise and lower
- All step surfaces shall be manufacturer’s standard
- Sun visor, both positions
- Side view mirrors – manufacturer’s standard
- Retractable seat belts
- Two (2) speed electric windshield wipers and washers, front and rear
- Tinted windows
- Heater and defroster - high output
- Air conditioning - manufacturer’s factory installed standard, high output (not to be roof-mounted)
- Travel lighting and reflectors to meet FMVSS no. 108
- Dome light
- AM/FM radio
- Back-up alarm
- Load charts
- Electric horn & Air horns
• backup alarm

11. CHASSIS ELECTRICAL SYSTEM

The vehicle shall be equipped with an integral electrical system consisting of battery, alternator, starter, wiring harness, and other necessary components and devices. The system shall conform to the following minimum requirements:

• Twelve (12) Volt nominal system voltage
• Largest alternator available
• Largest capacity battery available
• Battery master switch

12. BODY

The body of the vehicle shall be equipped with the factory standard tool boxes both front and rear.

Steps shall be provided to allow access from the ground at the front, rear and both sides of the of the vehicle to the cab.

A license plate bracket shall be mounted at the rear in a highly visible location where it does not interfere with other equipment. An LED light shall illuminate the license plate.

The body shall be equipped with all necessary lighting to fully comply with FMVSS 108. The body shall also be equipped with emergency, work and body illumination lighting. See Appendix B for specific details pertaining to lighting.

13. FUEL TANK

The vehicle shall be equipped with a minimum thirty-eight (38) gallon capacity steel fuel tank. The fuel filler cap shall be safety chained to prevent loss. The safety chain shall not be welded, riveted or bolted to the tank.

The fuel tank filler cap, neck and a six by six inch (6” x 6”) square around the filler neck or the complete tank shall be painted green. A permanent one and one-half inch (1-1/2”) high, green label with white lettering stating "Diesel Fuel Only" shall be installed as close as practical to the fuel filler neck.

14. DIESEL EXHAUST FLUID (DEF) TANK

The vehicle shall be equipped with a minimum five (5) gallon Diesel Exhaust Fluid (DEF) tank. The DEF filler cap shall be safety chained to prevent loss. The safety chain shall not be welded, riveted or bolted to the tank.

The DEF tank filler cap, neck and a six by six inch (6” x 6”) square around the filler neck or the complete tank shall be painted purple. A permanent one and one-half (1-1/2”) inch
high, purple label with white lettering stating "Diesel Exhaust Fluid Only" shall be installed as close as practical to the DEF filler neck.

15. LIFTING BOOM

The lifting boom shall be extendable to twenty-seven (27’) foot minimum and capable of rotating one hundred and eighty (180°) degrees, ninety (90°) degrees left and right of center. At full extension on tires, it shall have a minimum thirty-five hundred (3,500) pound capacity from the front and a two thousand (2,000) pound capacity from the side. The unit shall be stable without outriggers when operating the lifting boom.

All controls for the boom shall be hydraulic using a dual joystick, operator operated. The controls shall allow simultaneous operations of actuators i.e. raising and rotating. The hydraulic system shall have a backup pump capable of powering all actuators including those for the hi-rail system in the case of a failure to the systems primary pump.

When in a tunnel environment, the lifting boom must be capable of lifting a piece of rail thirty-nine (39’) feet long, six (6”) inches high, two thousand (2,000) pounds off a work flat that is four (4’) feet above the top of rail. Refer to Appendix A entitled “PATH TRACK FEATURES – TUNNEL AND OUTSIDE AREAS”

16. RAIL EQUIPMENT

The vendor shall provide a non-insulated hi-rail system capable of operating on the PATH’s railway system. This system includes the use of a third rail. See attached drawings in Appendix A detailing all pertinent features of the PATH system to design the vehicle with adequate clearances.

The hi-rail system furnished and installed shall be the friction drive type for rubber tired vehicles allowing both on-track/off-track versatility. The hi-rail system shall be driven by the vehicle’s propulsion system. The driving mechanism shall consist of a drive hub that is attached to a rail wheel. Through hydraulic pressure, the drive hub shall be pushed up against the vehicle tire, allowing the rubber tire to drive the drive hub, which in turn, drives the rail wheel. The rail system shall be designed and rated for the loading conditions specified.

The rail system shall pivot, over center, to allow the vehicle to work on rubber tires. The rail system structural swing frame shall include all steel, welded components with grease fittings at all pivot points. The structural frame shall be mounted to the vehicle. All axle mounts shall be welded to underside of frame rails with proper reinforcement. Mechanical pins shall be included to secure rail wheel in stowed position. The drive hub shall be heavy duty high strength steel. The surface shall be the full width of the driving tire, with a smooth knob pattern to prevent tire cutting. The drive hubs and tires must meet the clearance requirements of being able to travel around a one hundred and fifteen (115’) foot curve with the bench walls 2 ‘11” (see APENDIX A1-A5) from the gauge of the running rail and the third rail in the highest position (see APENDIX A1-
A5) and the tripper in the up position by a minimum of one and one half (1 ½”) inch. The Contractor is ultimately responsible for the clearance.

All hydraulic cylinders shall be equipped with holding valves. All Hydraulic oil shall be a Bio Hydraulic Fluid.

All rail system controls shall be mounted in the cab. All controls shall be permanently labeled as to its function.

The vehicle shall be equipped with rail sanders and multi-unit brake controls.

17. MISCELLANEOUS EQUIPMENT

- Magnet system produced shall be provided. The magnet system shall have a minimum 5KW, 230-V DC PTO driven generator and a thirty (30”) inch copper coil DC magnet designed to work while attached to the vehicle’s boom.
- Seventy-nine (79”) inch tote boom providing a maximum load radius of fourteen (14’) feet. At full extension on tires, it shall have a minimum eighty-five hundred (8,500) pound capacity from the front and a forty-six hundred (4,600) pound capacity from the side.
- Fifty-four (54”) inch adjustable forks.
- One and one quarter (1-1/4) cubic yard loader bucket.
- Front and rear pintle hooks, shall be provided. Mounted at a height of approximately fifteen (15”) inches + or – one half (1/2”) inches, from the top of rail to centerline of tow eye as measured from the rail surface while the machine is operating on its hi-rail gear.
- Turntable and boom pin type lock
- Steering pin type locks

18. ELECTRICAL

All auxiliary electrical circuits to be separately fused on a fuse panel under dash, fuse panel to have space for at least two additional circuits.

All wiring to be heavy duty, jacketed type, properly routed and secured to frame rails and equipment in such a manner so as to prevent chafing, pinching or system damage. Exterior exposed wire connectors shall be positive locking, and environmentally sealed to withstand elements such as temperature extremes, moisture and automotive fluids. All wiring shall be color/number coded for identity.

19. FIRE SUPPRESSION SYSTEM

The vehicle shall be equipped with the water mist fire suppression system or approved equal. Fire detection shall be of a hydro-mechanical design and be able to activate automatically without electrical power. The detection temperature of the system shall be established between three hundred degrees (300°) Fahrenheit to three hundred and ninety (390°) Fahrenheit. A panel shall be provided in the operator area with an audible and
visible alarm to warn of low pressure or activation. When a fire is detected in the engine compartment, the system shall release the entire contents of extinguisher in no less than fifty (50) seconds of actuation time. The system shall release adequate water mist to reduce the temperature of the engine components and engine compartment to reduce risk of re-igniting the fire. The extinguisher system shall utilize a water-based manufacturer’s environmentally friendly extinguishing fluid. Dry chemical shall not be accepted. The extinguisher shall be a high-pressure piston accumulator constructed from anodized aluminum of 6061 T6 alloy charged with nitrogen and extinguishing fluid to the manufacturer’s recommended levels. The system shall be Department of Transportation approved and it shall be equipped with all controls, gauges, and indicators required to reliably operate and allow it to be easily checked and maintained. The system shall be installed so that it is easily serviced. The system shall operate so that it releases the required amount of extinguishing fluid within fifty (50) seconds from the time the system is activated. The nozzles shall deliver water droplets between five (5) and eighty (80) µm and be constructed of brass or stainless steel. The fire suppression system shall be integrated to provide adequate coverage as recommended by the system manufacturer and shall be equipped with the following minimum features:

- A system panel that indicates that system is active, disabled, or needs service
- Automatically shutdown the engine when the system is activated and prevent the engine to start
- Override switch for the automatic engine shutdown that is safety wired in the automatic position
- Manual switch in the cab to activate the system that is safety wired in the NORMAL or DEACTIVATED position
- Manual switch on the exterior LH of the cab to activate the system that is safety wired in the NORMAL or DEACTIVATED position
- Provisions to test the system without releasing the agent

OPTIONAL EQUIPMENT

20. CENTRALIZED AUTOMATIC LUBRICATION SYSTEM
The vendor shall furnish and install a centralized automatic lubrication system to provide periodic lubrication. The system shall be designed to utilize lubricants of grades NLGI 00 or NLGI 000, and to lubricate all points requiring periodic greasing, except those where rotation or other dynamic considerations preclude automatic lubrication. The system shall include an electric gear pump, grease reservoir, control module, and distribution lines and fittings, properly installed in the vehicle.

21. BACK UP CAMERA
A color low light capable back up camera shall be furnished and installed at the rear of the unit with a color monitor (minimum five (5”) inch LCD screen) in the cab providing adequate visibility at the rear of the vehicle under all conditions, including low light conditions. The camera shall be mounted at the rear top at a location to provide rearward vision, and the
monitor shall be installed in the cab in a location convenient to driver’s vision. The camera and monitor shall be an integrated system. The vendor shall furnish and install a complete camera system, with manufacturer approved wiring and brackets for durable installation in the specific application.

22. SLIDING OPERATOR SIDE DOOR
   To improve egress for the operator while operating in tunnels with limited clearance between the operator side of the cab and the tunnel’s wall the cab shall be equipped with an articulating or sliding door. The door shall have a window that can raise and lower, and not require modification to the standard cab’s ROPS structure.

23. FINISHING AND PAINTING

   The unit shall be furnished with a quality commercial grade finish. All surfaces shall be free of dents, gouges, buckles, surface scaling, rust corrosion or other surface irregularities. Materials shall be cleaned and conditioned in accordance with the paint manufacturer's specification.

   All components shall be painted with the finished color(s) including wheels (inner and outer on duals, bumper(s), compartment interiors, ancillary equipment etc. The only exception shall be (chrome plated parts) or other parts specifically designated by the Engineer.

   As soon as practical after preparation, the unit and all components shall be primed with two (2) coats of the primer specified below. Parts which mate or join and are inaccessible after assembly shall receive an additional coat of primer before assembly.

   **SPECIFIED PRIMERS:**

   Gray primer approved by finish paint manufacturer

   or

   Zinc chromate primer - must be used on all aluminum components

   The final finish shall consist of three (3) coats of the paint specified below. The finish shall be of high gloss and uniform color with full hiding and shall be free from sags, runs, orange peel, crazing, pitting or other paint defects.

   **Specified Finish Paint** - Urethane or Polyurethane

   Manufacturer’s standard white (body shall match cab)

   The vendor shall notify the Engineer when the unit is ready for finishing and the Engineer may elect to inspect the unit prior to painting. Any inquiries regarding paint shall be addressed to the Engineer.
24. COLOR, NUMBERS, DECALS, LOGOS PORT AUTHORITY NON-AIRFIELD VEHICLE

If requested, the vendor shall supply a line drawing(s) with front, rear, left and right sides and top views for the engineer to indicate the location of decals logos and striping material for approval by the engineer. Questions regarding exact placement of decals and striping should be directed to the engineer for approval prior to installation.

Color shall be white, and may be the manufacturer’s standard color if approved by PATH. A color chip shall be provided to the Engineer prior to painting. However, when bodies or other major components are stainless, aluminum, or other materials that are not normally painted, they shall be left in their natural state. In addition, when requested, the upper surface of the hood and other areas that result in reflections in the driver’s field of view are to be painted flat black, or other flat color approved by the Engineer.

The vendor shall install Port Authority furnished vehicle fleet numbers, logos and striping for each vehicle:

- Two (2) sets of the three and one half (3 1/2”) inch high five (5) digit blue Port Authority fleet numbers (E.G. 36042). One (1) set located at the rear on each side of the vehicle as high and as near to the rear as practical. (C1)
- Three (3) sets of the one and one half (1 1/2”) inch high five (5) digit blue Port Authority fleet numbers (E.G. 36042). Located at the front and rear of the vehicle, and one (1) located on the dashboard so the operator can see the vehicle number. (C2)
- Port Authority logo centered on the vertical centerline of the vehicle on each front door. (C3)
- Facility logo on front lower edge of each front door below the Port Authority logo. (C4)
- Red/silver barricade striping material to cover entire rear bumper and portions of the vehicle rear as designated by the engineer. (C5)
- Port Authority decal and no smoking sign installed on dashboard.
- “Do Not Top Off” decal installed as close as practical to fuel filler.

The vendor shall furnish and install the following on each vehicle:

- A label near the fuel filler point(s) and all other fluid service points indicating type of fuel or service fluid appropriate for that filling location.
- Conspicuity material treatment (red, white, or silver tape) as required by FMVSS 108, or, as would be required to meet FMVSS-108 standards if this were an on-highway vehicle, and to adequately outline the vehicle.
- Additional conspicuity material treatment (red, white, or silver tape) as required by the engineer to assist in recognizing the size or shape of the vehicle.
• Red plastic engraved placard with one and one half (1½") inch high lettering stating vehicles overall height affixed as directed by the Engineer

• All vehicles equipped for towing a trailer (tow receiver, ball or pintle hook or other towing connection point installed on the unit), shall have a permanent weatherproof label or engraved placard located as near as practical to the towing connection point stating the maximum towing capacity and maximum permissible tongue weight.

The vendor shall supply and install any other vehicle striping, markings, and labels required to comply with all applicable federal, state, and local standards or recommended practices and regulations, or other necessary markings as requested.
24. LIGHTING AND WARNING DEVICES

The Vendor shall furnish and install warning and emergency lights, switches and controls, overcurrent protective devices, and relays as per the following applications and types. The Vendor shall furnish wiring, clamps and all other parts necessary to complete the specified installations, and all installations shall follow best industry practices. Whenever possible, if the OEM manufacturer offers optional switch panels for the installation of vocational equipment, the vehicle shall be equipped with the OEM optional panel, and the OEM optional switch panel shall be used for controlling the warning and emergency lights. Switches which control lighting shall illuminate when in the “ON” position.

All auxiliary electrical functions shall be keyed with ignition-on position, protected by appropriately rated fuse or circuit breaker, and controlled by the proper size switch, (or switch controlled constant duty relay). Wiring type and gauge shall meet SAE standards for wiring and shall conform to the instructions and recommended practices of the component manufacturer(s). All cables and wiring installed by the vendor shall be of a type, size and color or otherwise approved identification code in accordance with appropriate SAE and/or NAE standards and codes. Wires shall be enclosed in protective wire loom of appropriate size and protected from chaffing or cutting by grommets or other bulkhead connections, and clamped or fixed for protection from vibration and movement wherever appropriate. No interior mounted accessories shall interfere with the vehicle’s air bag deployment zones.

The Vendor shall supply line drawings with front, rear, left and right sides and top views for the Engineer to indicate the location of lights for approval by the Engineer.

After locations have been approved, a wiring schematic detailing the proposed installation of all lighting and warning devices shall be provided for the approval of the Engineer. The schematic shall include:

- Identification of each component including description, manufacturer, part number, and rated capacity
- Calculated actual operating load for each component
- Color or marking, approximate length, and calculated maximum load for each wire.
- Description of labels to be installed at switches, relays, fuses or circuit breakers, or other key locations.
- An approval block on the drawing for the Engineer’s name, signature and date of approval.

The Engineer may inspect and approve the wiring on the pilot unit at the Vendor’s plant. For the inspection the wiring and components shall be exposed with panels, covers and other obstructions removed and all components and wiring visible for inspection. The remaining units in the order shall be wired and assembled identical to the pilot unit. The Engineer may, at his sole discretion, request the inspection of the wiring of other units in the order to assure conformity and quality of workmanship.
Questions regarding exact placement of lights and controls should be directed to the Engineer for approval prior to installation.

The vehicle shall fully comply with FMVSS108 as if it were an on road vehicle.

Specific lighting pertaining to FMVSS 108:

- Brake, tail, and turn signals shall be LED, flush mounted on the body and be equipped on both ends of the vehicle to allow forward operation in either direction.
- The vehicle shall be equipped with all federal and state required clearance, identification and running lights as well as reflectors.
- LED license plate light

Specific emergency lighting as follows:

- Federal Signal model # 535300-PANY-A Three (3) Pod Amber light bar mounted on roof of cab. (Port Authority Provided)
- Four (4) Amber Truck-Lite Model 92696Y flashing LED lights, two (2) front and two (2) rear mounted on body. (Port Authority Provided)

Specific work lighting as follows:

- Four (4) White Truck-Lite Model #8160, LED Work Pattern, two (2) front and two (2) rear mounted high on the cab. (Port Authority Provided)
- Body lighting shall be LED type.
APPENDIX A2
PATH TRACK FEATURES – LOCATION OF CONTACT RAIL
APPENDIX A3
PATH TRACK FEATURES – ELEVATION OF CONTACT RAIL

ELEVATION OF CONTACT RAIL AND PROTECTION BOARD ASSY.
APPENDIX A4
PATH TRACK FEATURES – AUTOMATIC TRAIN STOP TRIPPER ARM
APPENDIX B

PORT AUTHORITY OF NEW YORK AND NEW JERSEY
OPERATION SERVICES DEPARTMENT
CENTRAL AUTOMOTIVE DIVISION
241 ERIE STREET, ROOM 307
JERSEY CITY, NEW JERSEY 07310-1397

DATE: AUGUST 2017
CODE: R217-4908

SPECIFICATIONS FOR:

SWING CRANE W/ RAIL GEAR EQUIPMENT

VENDOR'S DETAIL SHEET

VENDOR_____________________________TEL.NO.______________________________
REPRESENTATIVE______________________________
SUPPLIERS OF SPARE PARTS (NAME, ADDRESS)
____________________________________________________________________________
____________________________________________________________________________
____________________________________________________________________________

ESTIMATED DELIVERY____________________________________________________MONTHS

ESTIMATED DELIVERY DATE
____________________________________________________________________________*

ESTIMATED COST OF ADDITIONAL TRAINING ________________________________

ESTIMATED NON-WARRANTY MAINTENANCE HRS/UNIT _____________ IN
FIRST 3 YEARS

ESTIMATED ANNUAL PREVENTIVE MAINTENANCE HOURS/UNIT _______/YEAR
CAB-CHASSIS

<table>
<thead>
<tr>
<th>MAKE</th>
<th>MODEL</th>
<th>GVWR</th>
<th>WHEELBASE</th>
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ENGINE:
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<th>TYPE</th>
<th>CYLINDERS</th>
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<th>CUBIC INCHES</th>
<th>TORQUE</th>
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EXHAUST SCRUBBER:
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COOLING SYSTEM:
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ENGINE SHUTDOWN SYSTEM:
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COLD START AID

CONTROLS, MONITORS & INDICATORS

FUEL TANK CAPACITY

TRANSMISSION:
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STEERING:
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<td>Section</td>
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</tr>
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<td>BRAKES:</td>
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<td>MODEL_</td>
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<tr>
<td>GAWR_</td>
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<tr>
<td>SUSPENSION:</td>
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<tr>
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<td>TIRE SIZE_</td>
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<td>HYDRAULIC TILT_</td>
</tr>
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<td>TWO ENTRY DOORS_</td>
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<td>SUN VISOR_</td>
</tr>
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<td>SIDE VIEW MIRRORS:</td>
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<tr>
<td>MAKE_</td>
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<td>MODEL_</td>
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<tr>
<td>TYPE_</td>
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<tr>
<td>SEATING:</td>
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</table>
MAKE _______________________________________
MODEL _______________________________________
TYPE _______________________________________
QUANTITY ___________________________________
SEAT BELTS ___________________________________
ELECTRIC HORNS ________________________________
WINDSHIELD WIPERS ___________________________
TINTED WINDOWS ______________________________
HEATER/DEFROSTER _____________________________
AIR CONDITIONING _____________________________
AM/FM RADIO __________________________________
GAUGES AND INDICATOR LIGHTS __________________
_____________________________________________
_____________________________________________
BACKUP ALARM _________________________________

CHASSIS ELECTRICAL SYSTEM
VOLTAGE: ________________________________

ALTERNATOR:
MAKE _______________________________________
MODEL _______________________________________
CAPACITY ___________________________________

BATTERY:
MAKE _______________________________________
MODEL _______________________________________
COLD CRANKING AMPS _________________________
QUANTITY ___________________________________

LIFTING BOOM:
MAKE _______________________________________
MODEL _______________________________________
EXTENDABLE __________________________________
ROTATION ____________________________________
CAPACITY ___________________________________

RAIL EQUIPMENT:
MAKE _______________________________________
MODEL _______________________________________
TYPE _______________________________________
NON-INSULATED ______________________________
MULTI-UNIT BRAKE CONTROLS ___________________
RAIL SANDERS ________________________________
MISCELLANEOUS:
BUGGY BRAKES

AIR DRYER:
MAKE
MODEL

GENERATOR:
MAKE
MODEL
TYPE

MAGNET:
MAKE
MODEL
SIZE

TOTE BOOM:
SIZE
CAPACITY

FIFTY-FOUR (54") INCH ADJUSTABLE FORKS

ONE AND ONE FOURTH (1¼) YD³ BUCKET

FRONT AND REAR PINTLE HOOKS:
MAKE
MODEL

FRONT AND REAR MOUNTED TOOL BOXES

FINISHING AND PAINTING:

COLOR
MANUFACTURER PAINT #
List all warranties provided. Identify each below, and attach all terms and conditions for each vehicle.

<table>
<thead>
<tr>
<th>STANDARD WARRANTIES</th>
<th>Years or Months</th>
<th>Miles/Hrs</th>
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</thead>
<tbody>
<tr>
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</tbody>
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Details of standard warranties delineating items covered and not covered by the warranty as well as terms and conditions of the coverage to be provided with RFQ

<table>
<thead>
<tr>
<th>OPTIONAL WARRANTIES</th>
<th>Years or Months</th>
<th>Miles/Hrs</th>
<th>Cost/Vehicle</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
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<tr>
<td>6.</td>
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Details of optional warranties delineating items covered and not covered by the warranty as well as terms and conditions of the coverage to be provided if requested.
### APPENDIX C
#### PRICING SHEET

<table>
<thead>
<tr>
<th>VEHICLE</th>
<th>QTY</th>
<th>BASE PRICE</th>
<th>OPTION 1</th>
<th>OPTION 2</th>
<th>OPTION 3</th>
<th>TOTAL VEHICLE PRICE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Swing Crane with Rail Gear Equipment</td>
<td></td>
<td></td>
<td>Centralized Automatic Lubrication System</td>
<td>Back Up Camera</td>
<td>Sliding Operator Side Door</td>
<td></td>
</tr>
<tr>
<td>A. 1</td>
<td>1 EA</td>
<td>$</td>
<td>$</td>
<td>$</td>
<td>$</td>
<td>$</td>
</tr>
<tr>
<td>B. 2</td>
<td>1 EA</td>
<td>$</td>
<td>$</td>
<td>$</td>
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<td>$</td>
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<tr>
<td>TOTAL BID PRICE ($)</td>
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<td></td>
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<td></td>
<td>(Sum of A + B)</td>
</tr>
</tbody>
</table>

In the event of any calculation error(s), unit price prevails.  
In the event a unit price is omitted, the Port Authority shall have the right to re-calculate the total price by dividing the total price by the number of units, thus arriving at a unit price.
APPENDIX D
AUTOMOTIVE PROCUREMENT
STANDARD CONTRACT TERMS AND CONDITIONS

PART I- GENERAL PROVISIONS

1. INTENT
These specifications cover the furnishing of the latest production Swing Crane with Rail Gear Equipment, and all equipment and components as described in these specifications.

2. DEFINITIONS

Authority or Port Authority:
For the purposes of this agreement, the terms “Authority” or “Port Authority” mean The Port Authority of New York and New Jersey and/or the Port Authority Trans-Hudson Corporation (PATH), as applicable.

Agreement/Contract:
For the purposes of this agreement, the terms “Agreement” and “Contract” can be used interchangeably to mean the agreement entered into by the signatories of this document, and shall consist of the Specifications, this Appendix D, and any other appendices, attachments, exhibits or addenda, as outlined in the section entitled “Entire Agreement”.

Contractor/Vendor:
For the purposes of this agreement, the terms “Contractor” and “Vendor” can be used interchangeably to mean the entity entering into this Contract with the Port Authority of New York and New Jersey.

Chief Procurement Officer:
For the purposes of this agreement, Chief Procurement Officer means the Chief Procurement Officer of the Port Authority, or her successor in duties, or her authorized representative.

Days or Calendar Days:
As used in this agreement, the terms “Days or Calendar Days” shall mean consecutive calendar days, Saturdays, Sundays, and holidays, included.

Engineer:
As used in this agreement, the term “Engineer” means the Manager of the Central Automotive Division of the Port Authority, or his duly authorized representatives acting within the scope of the particular authority vested in them.

Month:
As used in this agreement, the term “Month” unless otherwise specified, means a calendar month.

Week:
As used in this agreement, the term “Week,” unless otherwise specified, means seven (7)
consecutive calendar days, Saturdays, Sundays, and holidays.

Work:
As used in this agreement, the term “Work” means all services, equipment and materials (including materials and equipment, if any, furnished by the Authority) and all other things necessary or proper for, or incidental to the services to be performed or goods to be furnished in connection with the service to be provided hereunder.

3. VENDOR REQUIREMENTS
The Vendor must have or be closely associated with an adequate, as determined by the Engineer, service facility staffed by trained and experienced service personnel and a stock of repair parts suitable for a timely response to the Authority's vehicle service requirements. All warranty work that requires more than one half a day (four (4) hours) must be performed at the Vendor’s designated repair site. All costs of moving the vehicle to and from this repair site are to be at the Vendor’s expense, and included in the warranty. Warranty work that requires less than one half day’s work may be performed at the local automotive shop with permission from the shop supervisor, and prior notification and mutually agreeable scheduling. In such instances, Vendor staff must work cooperatively with shop personnel in accordance with applicable labor agreements.

4. ENGINEER’S AUTHORITY
In the performance of the Work hereunder, the Vendor shall conform to all orders, directions and requirements of the Engineer and shall perform the Work hereunder to the satisfaction of the Engineer at such times and places, by such methods and in such manner and sequence as he/she may require, and the Contract shall at all stages be subject to his/her inspection. The Engineer shall determine the amount, quality, acceptability and fitness of all parts of the Work and shall interpret the Specifications and any orders for Extra Work. The Vendor shall employ no equipment, materials, methods or staff or personnel to which the Engineer objects. Upon request, the Engineer shall confirm in writing any oral order, direction, requirement or determination.

The Engineer shall have the authority to decide all questions in connection with the Services to be performed hereunder. The exercise by the Engineer of the powers and authorities vested in him/her by this section shall be binding and final upon the Port Authority and the Vendor.

5. GENERAL REQUIREMENTS
The unit and associated equipment shall be furnished complete and ready for use, all as more fully required by the terms of the Specifications and in strict accordance therewith. The unit and all equipment shall be the manufacturers’ latest current published stock model(s), which meet the requirements of these specifications. The Vendor shall not substitute an equivalent make or model vehicle without prior express written approval by the Engineer. The Vendor shall submit with its bid all the brochures, drawings, and technical information necessary for a complete product evaluation.
6. TAX EXEMPTIONS AND INDEMNITY - CUSTOMS DUTIES

Sales to the Port Authority, as a governmental instrumentality of the states of New York and New Jersey, are exempt from taxation, either state or municipal, in those two states, and also from federal taxation, including excise taxes. The Vendor therefore certifies that there are no such taxes included in the prices quoted herein. The Vendor should retain a copy of this agreement to substantiate the exempt sale. If, however, any sales tax, use tax, or excise tax imposed by Congress, by a state or any political sub-division thereof is now or hereafter applicable to the sale of the units to the Port Authority, such taxes will be reimbursed by the Port Authority, subject to the provisions of the tax indemnity below. In addition, the Vendor shall bear all customs duties or imposts and all export duties or imposts, if any, resulting from or in connection with the performance of this agreement.

7. TAX INDEMNITY

If any claim is made against the Vendor by a governmental authority for the taxes as stated above, then the Port Authority will reimburse the Vendor in an amount equal to the amount of such tax required to be paid in accordance with the requirements of law, provided that:

The Vendor has complied with such rules and regulations as may have been promulgated relative to the claiming of any exemption from such taxes and has filed all the forms and certificates required by the applicable laws, rules, and regulations in connection therewith; and

The Port Authority is afforded the opportunity, before any payment of tax is made, to contest said claim in the manner and to the extent that the Port Authority may choose and to settle or satisfy said claim, and such attorney as the Port Authority may designate is authorized to act for the purpose of contesting, settling, and satisfying said claim; and

The Vendor gives immediate notice to the Port Authority of any such claim, cooperates with the Port Authority and its designated attorney in contesting said claim and furnishes promptly to the Port Authority and said attorney all information and documents necessary or convenient for contesting said claim.

If the Port Authority elects to contest any such claim, it will bear the expense of such contest.

8. INSURANCE PROCURED BY THE VENDOR

The Contractor and its subcontractor(s) shall take out, maintain, and pay the premiums on Commercial General Liability Insurance, for the life of the Contract and such Insurance and shall be written on an ISO occurrence form CG 00 01 0413 or its equivalent covering the obligations assumed by the Contractor under this Contract including but not limited to premise-operations, products and completed operations, and independent contractors coverage, with contractual liability language covering the obligations assumed by the Contractor under this Contract and, if vehicles are to be used to carry out the performance of this Contract, then the Contractor shall also take out, maintain, and pay the premiums on Automobile Liability Insurance covering any autos in the following minimum limits:
Commercial General Liability Insurance - $2 million combined single limit per occurrence for bodily injury and property damage liability.

Automobile Liability Insurance - $2 million combined single limit per accident for bodily injury and property damage liability.

The insurance shall be written on an occurrence basis, as distinguished from a “claims made” basis, and shall not include any exclusions for “action over claims” (insured vs. insured) and minimally arranged to provide and encompass at least the following coverages:

- Contractual Liability to cover liability assumed under the Contract;
- Independent Contractor’s Coverage;
- Premise-Operations, Products and Completed Operations Liability Insurance;
- Coverage for work with fifty feet (50’) of railroad;
- The insurance coverage (including primary, excess and/or umbrella) hereinafter afforded by the Contractor and all subcontractor(s) shall be primary insurance and non-contributory with respect to the additional insureds;
- Excess/umbrella policies shall “follow form” to the underlying policy;
- Excess/umbrella policies shall have a liberalization clause with drop down provision;
- To the extent any coverage the Contractor and subcontractor(s) obtains and/or maintains under this Contract contains “Other Insurance” language or provisions, such language or provisions shall not be applicable to the additional insureds or to any insurance coverage maintained by the additional insureds;
- All insurance policies shall include a waiver of subrogation, as allowed by law, in favor of the additional insureds;
- Defense costs must be outside of policy limits. Eroding limits policies are not permitted;
- In the event the Contractor and/or its subcontractors obtains and/or maintains insurance in an amount greater than the minimum limits required under this Contract, then the full limits of that insurance coverage will be available to respond to any claim asserted against the additional insureds that arises out of or is in any way connected with this Contract;
- Additional insureds coverage shall not be restricted to vicarious liability unless required by controlling law.

In addition, the liability policy (ies) shall be written on a form at least as broad as ISO Form CG 20 10 10 01 (for ongoing operations work) together with ISO Form CG 20 37 10 01 (for completed operations work) or their equivalent and endorsed to and name “The Port Authority of New York and New Jersey and its related entities, their Commissioners, Directors, Superintendents, officers, partners, employees, agents, their affiliates, successors or assigns” as Insured (as defined in the policy or in an additional insured endorsement amending the policy’s “Who is An Insured” language as the particular policy may provide). The “Insured” shall be afforded coverage and defense as broad as if they are the first named insured and regardless of whether they are otherwise identified as additional insureds under the liability policies, including but not limited to premise-operations, products-completed operations on the Commercial General Liability Policy. Such additional insureds status shall be provided regardless of privity of contract between the parties.
The liability policy (ies) and certificates of insurance shall contain separation of insured and severability of interests clauses for all policies so that coverage will respond as if separate policies were in force for each insured. An act or omission of one of the insureds shall not reduce or void coverage to the other insureds. The Contractor is responsible for all deductibles and losses not covered by commercially procured insurance. Any portion of the coverage to be provided under a Self-Insured Retention (SIR) of the Contractor is subject to the review and approval of the General Manager, Risk Finance. Furthermore, any insurance or self-insurance maintained by the above additional insureds shall not contribute to any loss or claim. These insurance requirements shall be in effect for the duration of the contract to include any warrantee /guarantee period and any maintenance period.

If any of the Work is to be done on or at Port Authority facilities by subcontractors and, if the Contractor requires its subcontractors to procure and maintain such insurance in the name of the Contractor, then such insurance as is required herein shall include and cover the additional insureds and it must have insurance limits not lower than those set forth by the Port Authority herein, along with all the insurance requirements in this section known as “Insurance Procured by the Contractor”.

All insurance coverage shall be provided by the Contractor and/or by or for any of its subcontractors at no additional expense to the Port Authority and its related entities. A copy of this section titled “Insurance Procured by the Contractor” shall be given to your insurance agent and subcontractors and shall form a part of the covered contract or subcontract for insurance purposes in furtherance of the insurance requirements under this Contract.

If Utility Track Vehicle (UTV) is removed from PATH property, then the Contractor shall procure, maintain a policy of Garagekeepers Direct Legal Liability Insurance providing primary and comprehensive coverage form to cover all risk, including fire, explosion, partial or total theft, riot, vandalism, collision, upset with minimum limit of $ 600,000.00 per occurrence.

Further, it is the Contractor’s responsibility to maintain, enforce and ensure that the type of coverages and all limits maintained by it and any of all subcontractors are accurate, adequate and in compliance with the Port Authority requirements; and the Contractor is to retain a copy of its subcontractors’ certificates of insurance. All certificates of insurance shall be turned over to the Port Authority prior to the start of work, including subcontractors’ work, and upon completion of the Contract.

The Contractor, its subcontractors, and its insurers shall not, without obtaining the express advance written permission from the General Counsel of the Port Authority, raise any defense involving in any way the jurisdiction of the Tribunal over the person of the Port Authority, the immunity of the Port Authority, its Commissioners, officers, agents or employees, the governmental nature of the Port Authority, or the provisions of any statutes respecting suits against the Port Authority.

The Contractor and its subcontractor(s) shall also take out, maintain, and pay premiums on Workers’ Compensation Insurance in accordance with the requirements of law in the state(s)
where work will take place, and Employer’s Liability Insurance with limits of not less than $1 million per each accident.

Each policy above shall contain an endorsement that the policy may not be canceled, terminated, or modified without thirty (30) days’ prior written notice to the Port Authority Att: Facility Contract Administrator, at the location where the work will take place with a copy to the General Manager, Risk Finance.

The Port Authority may, at any time during the term of this Contract, change or modify the limits and coverages of insurance. Should the modification or change results in an additional premium, the General Manager, Risk Finance for the Port Authority may consider such cost as an out-of-pocket expense.

Within five (5) days after the award of this Contract and prior to the start of work, the Contractor must submit an original certificate of insurance to the Port Authority Facility Contract Administrator, at the location where the work will take place. This certificate of insurance MUST show evidence of the above insurance policy (ies), including, but not limited to, the cancellation notice endorsement and stating the contract number prior to the start of work. The Contractor is also responsible for maintaining and conforming to all insurance requirements from the additional insureds and their successors or assigns. The General Manager, Risk Finance must approve the certificate(s) of insurance before any work can begin. Upon request by the Port Authority, the Contractor shall furnish to the General Manager, Risk Finance, a certified copy of each policy, including the premiums.

If at any time the above liability insurance should be canceled, terminated, or modified so that the insurance is not in effect as above required, then the Contractor and all subcontractors shall suspend performance of the Contract at the premises until a satisfactory insurance policy (ies) and certificate of insurance is provided to and approved by Risk Finance, unless the Facility or Project Manager directs the Contractor, in writing, to continue to performing work under the Contract. If the Contract is so suspended, no extension of time shall be due on account thereof.

Renewal certificates of insurance or policies shall be delivered to the Port Authority Facility Contractor Administrator, and upon request from the additional insureds, their successors or assigns at least fifteen (15) days prior to the expiration date of each expiring policy. The General Manager, Risk Management must approve the renewal certificate(s) of insurance before work can resume on the facility. If at any time any of the certificates or policies shall become unsatisfactory to the Port Authority, the Contractor shall promptly obtain a new and satisfactory certificate and policy and provide same to the Port Authority.

Failure by the Contractor to meet any of the insurance requirements, including the requirement that the Port Authority be afforded the full extent of the insurance obtained under this Contract without limitation, shall be deemed a material breach of contract and may be a basis for termination of this Contract by the Port Authority.

The requirements for insurance procured by the Contractor and subcontractor(s) shall not in any way be construed as a limitation on the nature or extent of the contractual obligations assumed by
the Contractor under this Contract. The insurance requirements are not a representation by the Port Authority as to the adequacy of the insurance necessary to protect the Contractor against the obligations imposed on it by law or by this or any other contract. **CITS#5396N**

**9. OBLIGATION TO ORDER VEHICLE(S)**

Upon award of contract, the Contractor shall take all actions necessary to facilitate on-time delivery. The Contractor must submit written proof to the Engineer within fourteen (14) days after award of contract that the vehicle(s) have been ordered. This proof shall consist of valid purchase order(s) or factory order and acceptance with production slot information from the factory. Failure of the Vendor to place a valid and binding order within the fourteen (14) days, or to ensure that its dealer places a valid and binding order within fourteen (14) days, shall be cause for the Authority to cancel the contract without any further obligation to the Vendor.

**10. PRE-MANUFACTURING MEETING**

At the Engineer’s request, there shall be a pre-manufacturing meeting prior to ordering/building the vehicles. It shall take place at a Port Authority location and shall involve Vendor personnel that are directly involved with vehicle ordering/manufacturing. At this meeting, the Vendor shall give the Port Authority the appropriate phone numbers, email and contact person(s) at to enhance the communication during the construction process. At the meeting, they will discuss the placement of decals, radios, lights and various other systems that will be installed, as needed by the vehicle manufacturer and/or the Port Authority.

**11. TITLE TO UNITS**

Upon delivery and payment for each vehicle, all portions of the vehicle and all components installed on the vehicle, which had not previously become Port Authority property under the provisions the section entitled “Final Payment” shall become the property of the Port Authority. The Vendor shall furnish to the Port Authority all such bills of sale and certificates of title or origin and other instruments as may be required, assuring the Authority of title to all materials free of liens and other encumbrances.

**12. PAYMENTS**

After delivery, receipt of an invoice and all other required documents, and acceptance by the Engineer of a unit, the Port Authority will advance to the Vendor, within thirty (30) days, a payment of an amount equal to the unit price as set forth in the Pricing Sheet.

Cost for approved “Extra Work” shall be invoiced separately, accompanied by the written approved “Extra Work” authorized by the Engineer and subject to any monetary deductions, as determined solely by the Port Authority Engineer.

The invoice and documents required to be submitted for each vehicle are as follows:

The invoice for the delivered vehicle, which shall indicate a full description of the vehicle, the cab-chassis’ make and model, the vehicle identification number, and the Port Authority number.
A certificate of origin fully completed transferring title and ownership to the Port Authority of NY & NJ.

The above invoice and certificate of origin shall serve to pass title of each complete vehicle to the Port Authority, free of liens, third party claims, or any other security interests.

13. FINAL PAYMENT

The acceptance by the Vendor, or by anyone claiming by or through the Vendor, of the final payment hereunder shall be, and shall operate as, a release to the Port Authority of all claims and of all liability to the Vendor for all things done or furnished in connection with the contract and for every act and neglect, of the Authority or others relating to or arising out of the contract including claims arising out of breach of contract and claims based on claims of third persons.

The Vendor’s agreement as provided in the immediately preceding paragraph above shall be deemed to be part of the consideration forming part of this contract as a whole and not to be gratuitous; but in any event even if deemed gratuitous and without consideration, such agreement as provided in the immediate preceding paragraph above shall nevertheless be enforceable. Such release shall include all claims, whether or not in litigation and even though still under consideration by the Authority. Such release shall be effective notwithstanding any purported reservation of rights by the Vendor to preserve such claim. The acceptance of any check designated as “Final Payment” or bearing any similar designation shall be conclusively presumed to demonstrate the intent of the Vendor that such payment was intended to be accepted as final, with the consequences provided in this numbered clause.

The Vendor agrees that he shall not be entitled to, and hereby waives any right he might otherwise have to, and shall not seek any judgment whether under this contract or otherwise for any such final payment or for an amount equivalent thereto or based thereon, or for any part thereof, if such judgment would have the effect of varying, setting aside, disregarding or making inapplicable the terms of this numbered clause or have the effect in any way of entitling the Vendor to accept such final payment or an amount equivalent thereto or based thereon or any part thereof other than the same fashion as a voluntary acceptance of a final payment subject to all the terms of this contract including this numbered clause, unless and until the Vendor should obtain a judgment on any claim arising out of or in connection with this contract (including a claim based on breach of contract) for an amount not included in said final payment. In any case in which interest is allowable on the amount of the final payment, such interest shall be at the rate of six percent (6%) per annum for the period, if any, in which such interest is due.

14. EXTRA WORK

The Vendor is required to provide separate materials, supplies, equipment and personnel for Extra Work when such is deemed necessary by the Engineer. “Extra Work” as used herein shall be defined as work within the scope of services described in this Agreement that causes an increase or decrease in the cost of, or the time required for performance of, the agreed-upon work under this Agreement.
The Engineer may order Extra Work in writing at any time when making changes to the general scope of this Agreement. If such change causes an increase or decrease in the cost of, or the time required for performance of the agreed upon work, an equitable adjustment.

The Engineer will issue, in writing, a Request for Quotation (RFQ) to the Vendor for cost and time impacts of the Extra Work to be performed.

(a) The Vendor shall submit an Extra Work proposal fifteen (15) days after receipt of the RFQ, or as otherwise specified by the Engineer. Said proposal shall include the total proposed cost of the Extra Work, detailed in accordance with the cost breakdown specified herein, together with any associated proposed revision to the Agreement schedule.

(b) If the Vendor fails to submit an Extra Work proposal within the specified time, or if in the sole opinion of the Engineer, such Extra Work proposal submitted by the Vendor is not representative of the Extra Work to be performed, or for any other reason, the Engineer may nevertheless direct the Vendor to proceed with such Extra Work in writing. Failure to perform such Extra Work when directed by the Engineer, even in the absence of agreement as to price, schedule impact, payment terms, or other issues, may be grounds for default.

Compensation for such Extra Work shall be determined by mutual agreement between the Engineer and the Vendor. In the event that the Vendor becomes aware of anything that may affect the scope of work or services that may result in an adjustment of the cost or the time required for performance, the Vendor shall advise the Engineer immediately upon notice of such condition. The written notice shall explain the circumstances giving rise to the Extra Work and shall set forth the proposed adjustment in compensation or time. This notice shall be given to the Engineer prior to the time that the Vendor perform work or services related to the proposed adjustment.

Implementation of Extra Work by the Vendor without advance written notice and approval from the Engineer may, at the Engineer’s sole discretion, result in nonpayment of the invoices reflecting such Extra Work. Compensation for such Extra Work shall be determined by mutual agreement between the Engineer and the Vendor.

Extra Work proposals shall be priced as described below, and shall include all associated information and calculations. Subcontractors’ costs in the Extra Work proposals shall be detailed in the same cost breakdown specified herein.

However, should the parties fail to reach such an agreement, the Vendor's compensation shall be increased by the following amounts and such amounts only:

In the case of Extra Work performed by the Vendor itself, an amount equal to the actual direct cost in money of (a) labor required for such Extra Work, plus a fixed dollar amount, as determined by the Engineer, not to exceed the amount that is equal to ten percent (10%) of the Engineer’s final estimate of the direct cost in money for labor as required for such Extra Work,
(b) materials required for work performed plus a fixed dollar amount, as determined by the Engineer, not to exceed the amount that is equal to five percent (5%) of the Engineer’s final estimate of the direct cost in money for materials as required for such Extra Work, and (c) such rental for equipment (other than small tools) required for such Extra Work as the Engineer deems reasonable.

In the case of Extra Work performed by a subcontractor, an amount equal to the sum of (a), (b) and (c) above, plus a fixed dollar amount, as determined by the Engineer, not to exceed the amount that is equal to five percent (5%) of the sum of the foregoing costs, percentage of cost, and rental provided that any such Subcontract has been approved, in advance, by the Engineer. In no case shall the amount of the aggregate mark-up for the Vendor and all of his subcontractors at every tier exceed the dollar amount that is equal to twenty and three quarters per cent (20.75%) of the direct cost of the Extra Work.

Subcontractors’ costs in the Extra Work quote shall be detailed in the same cost breakdown specified herein, except that the first tier subcontractor shall not be allowed any overhead or profit on any of the lower tier sub-subcontractor Work.

15. TIMES FOR PERFORMANCE
The Vendor shall complete the performance of the delivery and acceptance of all of the units, as described in the clause hereof entitled "delivery." The Vendor's obligation for the performance within the times provided for in this agreement is of the essence of this agreement. The Vendor guarantees that it can and will complete such performance within the times hereinbefore stipulated or within the times as extended in accordance with the terms of this agreement.

16. INTELLECTUAL PROPERTY
The right to use all patented materials, appliances, processes of manufacture or types of construction, trade and service marks and copyrights, collectively hereinafter referred to as the “intellectual property rights” in the performance of the work shall be obtained by the Vendor without separate or additional compensation. The Vendor shall indemnify the Port Authority against and save it harmless from all loss and expense incurred as a result of any claims in the nature of intellectual property rights infringement arising out of the Port Authority’s use, in accordance with the immediately preceding statement, of any protected intellectual property rights. The Vendor, if requested, shall conduct all negotiations with respect to and defend such claims. If the Port Authority be enjoined either temporarily or permanently from the use of any subject matter as to which the Vendor is to indemnify the Port Authority against infringement, then the Port Authority may, without limiting any other rights it may have, require the Vendor to supply temporary or permanent replacement vehicles/units approved by the Engineer, and if the Vendor fails to do so the Vendor shall, at its expense, remove all such enjoined vehicles/units and refund the cost thereof to the Port Authority or take such steps as may be necessary to insure compliance by the Port Authority with said injunction, to the satisfaction of the Port Authority.

17. VENDOR’S WARRANTIES
The Vendor represents and warrants:
A. That it is financially solvent, that it is experienced in and competent to perform the requirements of this contract, that the facts stated or shown in any papers submitted or referred to in connection with its proposal are true, and, if the Vendor be a corporation, that it is authorized to perform this contract;

B. That it has carefully examined and analyzed the provisions and requirements of this contract, and that from its own investigations it has satisfied itself as to the nature of all things needed for the performance of this contract, the general and local conditions and all other matters which in any way affect this contract or its performance, and that the time available to it for such examination, analysis, inspection and investigation was adequate;

C. That the contract is feasible of performance in accordance with all its provisions and requirements and that it can and will perform it in strict accordance with such provisions and requirements;

D. That no commissioner, officer, agent, or employee of the Authority is personally interested directly or indirectly in this contract or the compensation to be paid thereunder;

That, except only for those representations, statements or promises expressly contained in this contract, no representation, statement or promise, oral or in writing, of any kind whatsoever by the Authority, its commissioners, officers, agents, employees, or consultants has induced the Vendor to enter into this contract or has been relied upon by the Vendor, including any with reference to: (1) the meaning, correctness, suitability, or completeness of any provisions or requirements of this contract; (2) the nature, quantity, quality, or size of the materials, equipment, labor, and other facilities needed for the performance of this contract; (3) the general or local conditions which may in any way affect this contract or its performance; (4) the price of the contract; or (5) any other matters, whether similar to or different from those referred to in (1) through (4) immediately above, affecting or having any connection with this contract, the bidding thereon, any discussions thereof, the performance thereof or those employed therein or connected or concerned therewith.

18. TERMINATION PROVISIONS, AND RIGHTS AND REMEDIES

Any right of termination set forth in this paragraph shall be in addition to and not in lieu of any and all rights and remedies that the Port Authority shall have at law or in equity consequent upon the Contractor's breach of this Contract and shall be without prejudice to any and all other rights and remedies available to the Port Authority. It is hereby specifically agreed and understood that the exercise by the Port Authority of any right of termination set forth in this paragraph shall not be or be deemed to be an exercise by the Port Authority of an election of remedies that would preclude the Port Authority from exercising any right to money damages it may have for the period prior to the effective date of termination to the original expiration date of the Contract, and this provision shall be deemed to survive the termination of this Contract as aforesaid.

I. Termination due to Impossibility of Performance
   a. If one or more of the following events shall occur:
      1. If fire or other cause shall destroy all or a substantial part of the Facility.
      2. If any governmental agency shall condemn or take a temporary or permanent interest in all or a substantial part of the Facility, or all of a part of the Port Authority’s interest therein;
then upon the occurrence of such event or at any time thereafter during the continuance thereof, the Port Authority shall have the right on twenty-four (24) hours written notice to the Contractor to terminate this Contract, such termination to be effective upon the date and time specified in such notice.

In such event this Contract shall cease and expire on the effective date of termination as if said date were the date of the expiration of this Contract. Such termination shall not, however, relieve the Contractor of any liabilities or obligations hereunder which shall have accrued on or prior to the effective date of termination.

b. If one or more of the following events shall occur:

1. The Contractor shall become insolvent, or shall take the benefit of any present or future insolvency statute, or shall make a general assignment for the benefit of creditors, or file a voluntary petition in bankruptcy or a petition or answer seeking an arrangement or its reorganization or the readjustment of its indebtedness under the federal bankruptcy laws or under any other law or statute of the United States or of any State thereof, or consent to the appointment of a receiver, trustee, or liquidator of all or substantially all its property; or

2. By order or decree of a court the Contractor shall be adjudged bankrupt or an order shall be made approving a petition filed by any of the creditors, or, if the Contractor is a corporation, by any of the stockholders of the Contractor, seeking its reorganization or the readjustment of its indebtedness under the federal bankruptcy laws or under any law or statute of the United States or of any State thereof; or

3. A petition under any part of the federal bankruptcy laws or an action under any present or future insolvency law or statute shall be filed against the Contractor and shall not be dismissed within thirty (30) days after the filing thereof; or

4. The interest of the Contractor under this Contract shall be transferred to, passed to or devolve upon, by operation of law or otherwise, any other person, firm or corporation, or

5. The Contractor, if a corporation, shall, without the prior written approval of the Port Authority, become a surviving or merged corporation in a merger, a constituent corporation in a consolidation, or a corporation in dissolution; or

6. If the Contractor is a partnership, and the said partnership shall be dissolved as the result of any act or omission of its copartners or any of them, or by operation of law or the order or decree of any court having jurisdiction, or for any other reason whatsoever; or

7. By or pursuant to, or under authority of any legislative act, resolution or rule, or any order or decree of any court or governmental board, agency or officer having jurisdiction, a receiver, trustee, or liquidator shall take possession or control of all or substantially all of the property of the Contractor and shall continue in effect for a period of fifteen (15) days;
then upon the occurrence of any such event or at any time thereafter during the continuance thereof, the Port Authority shall have the right upon five (5) days’ notice to the Contractor to terminate this Contract and the rights of the Contractor hereunder; termination to be effective upon the date and time specified in such notice as if said date were the date of the expiration of this Contract. Termination shall not relieve the Contractor of any liabilities or obligations hereunder which have accrued on or prior to the effective date of termination.

II. Termination for Cause or Convenience

The Port Authority may terminate this contract, in whole or in part, at any time by written notice to the Contractor for cause or when it is in the Authority’s best interest (for convenience), pursuant to 49 C.F.R. 13.36 (i)(2) and 2 CFR 200, Appendix II (B). In the event of termination for convenience, the Contractor will be paid its costs as provided for in the Contract, for work performed up to the time of termination for convenience.

1. Termination for Cause

a. If any of the following shall occur:
   
   1. The Contractor shall cease working, abandon any part of his performance, desert, stop or discontinue its services in the premises for any reason whatsoever and regardless of the fault of the Contractor; or
   
   2. The Contractor shall fail to keep, perform and observe each and every other promise, covenant and agreement set forth in this Contract on its part to be kept, performed or observed, within five (5) days after receipt of notice of default thereunder from PATH or the Port Authority on behalf of the Port Authority (except where fulfillment of its obligations requires activity over a greater period of time, and the Contractor shall have commenced to perform whatever may be required for fulfillment within five (5) days after receipt of notice and continues such performance without interruption except for causes beyond its control);

then upon the occurrence of any such event or during the continuance thereof, the Port Authority shall have the right on twenty-four (24) hours’ notice to the Contractor to terminate this Contract and the rights of the Contractor hereunder, termination to be effective upon the date and time specified in such notice. Termination shall not relieve the Contractor of any liabilities which shall have accrued on or prior to the effective date of termination.

b. If any of the events enumerated in this Section shall occur prior to commencement date of this Contract, the Port Authority, upon the occurrence of any such event or any time thereafter during the continuance thereof by twenty-four (24) hours’ notice, may terminate or suspend this Contract and the rights of the Contractor hereunder, such termination or suspension to be effective upon the date specified in such notice.

c. No payment by the Port Authority of any monies to the Contractor for any period or periods after default of any of the terms, covenants or conditions hereof to be performed, kept and observed by the Contractor and no act or thing done or omitted to be done by the Port Authority shall be deemed to be a waiver of the right of the Port Authority to terminate this Contract or of any other right or remedy to which the Port Authority is entitled hereunder.
Authority maybe entitled because of any breach thereof. No waiver by the Port Authority of any default on the part of the Contractor in the performance of any of the terms, covenants and conditions hereof to be performed, kept or observed by the Contractor shall be or be construed to be a waiver by the Port Authority of any other subsequent default in the performance of any of the said terms, covenants and conditions.

2. Termination for Convenience
   a. In addition to all other rights of revocation or termination hereunder and notwithstanding any other provision of this Contract, the Port Authority may terminate this Contract and the rights of the Contractor hereunder for convenience at any time upon five (5) days written notice to the Contractor; and in such event this Contract shall cease and expire on the date set forth in the notice of termination as fully and completely as though such date were the original expiration date hereof; and if such effective date of termination is other than the last day of the month, the amount of the compensation due to the Contractor from the Port Authority shall be prorated when applicable on a daily basis. Such cancellation shall be without prejudice to the rights and obligations of the parties arising out of portions already performed, but no allowance shall be made for anticipated profits.

III. Rights and Remedies
   a. If (1) the Contractor fails to perform any of its obligations under this Contract or any other agreement between PATH or the Port Authority and the Contractor (including its obligation to PATH or the Port Authority to pay any claim lawfully made against it by any supplier, subcontractor or worker or other person which arises out of or in connection with the performance of this Contract or any other agreement with PATH or the Port Authority) or (2) any claim (just or unjust) which arises out of or in connection with this Contract or any other agreement between PATH or the Port Authority and the Contractor is made against the Port Authority or PATH or (3) any subcontractor under this Contract or any other agreement between PATH or the Port Authority and the Contractor fails to pay any claims lawfully made against it by any supplier, subcontractor, worker or other third person which arises out of or in connection with this Contract or any other agreement between PATH or the Port Authority and the Contractor or (4) if in the opinion of PATH or the Port Authority any of the aforesaid contingencies is likely to arise, then the Port Authority or PATH, as applicable, shall have the right, in its discretion, to withhold out of any payment (final or otherwise) such sums as the Port Authority may deem ample to protect it against delay or loss or to assure the payment of just claims of third persons, and to apply such sums in such manner as the Port Authority may deem proper to secure such protection or satisfy such claims. All sums so applied shall be deducted from the Contractor's compensation. Omission by the Port Authority to withhold out of any payment, final or otherwise, a sum for any of the above contingencies, even though such contingency has occurred at the time of such payment, shall not be deemed to indicate that the Port Authority does not intend to exercise its right with respect to such contingency. Neither the above provisions for rights of the Port Authority to
withhold and apply monies nor any exercise or attempted exercise of, or omission to
exercise, such rights by the Port Authority shall create any obligation of any kind to
such supplier, subcontractor, worker or other third person. If, however, the payment
of any amount due the Contractor shall be improperly delayed, the Port Authority
will pay the Contractor interest thereon at the rate of 6% per annum for the period of
the delay, it being agreed that such interest shall be in lieu of and in liquidation of any
damages to the Contractor because of such delay.

b. If the Port Authority has paid any sum or has incurred any obligation or expense
which the Contractor has agreed to pay or reimburse the Port Authority, or if the Port
Authority is required or elects to pay any sum or sums or incurs any obligation or
expense by reason of the failure, neglect or refusal of the Contractor to perform or
fulfill any one or more of the conditions, covenants, or agreements contained in this
Contract, or as a result of an act of omission of the Contractor contrary to the said
conditions, covenants and agreements, the Contractor shall pay to the Port Authority
the sum or sums so paid or expense so incurred, including all interests, costs and
damages, promptly upon the receipt of the Port Authority’s statement therefor. The
Port Authority may, however, in its discretion, elect to deduct said sum or sums from
any payment payable by it to the Contractor.

c. If the Port Authority pays any installment to the Contractor without reducing said
installment as provided in this Contract, it may reduce any succeeding installment by
the proper amount, or it may bill the Contractor for the amount by which the
installment paid should have been reduced and the Contractor shall pay to the Port
Authority any such amount promptly upon receipt of Path’s statement therefor.

d. The Port Authority shall also have the rights set forth above in the event the Contractor
shall become insolvent or bankrupt or if its affairs are placed in the hands of a
receiver, trustee or assignee for the benefit of creditors.

19. RIGHTS OF THE PORT AUTHORITY

If the Vendor is guilty of any breach hereof, the Port Authority shall be entitled:
A. To withhold out of monies otherwise due such sums as the Engineer deems necessary to
protect it from loss or delay and to apply such sums from the Vendor's account as the
Engineer deems best to secure such protection.
B. To have any work completed for the Vendor's account either itself or through others.
C. To cancel this agreement as to all or any part of the uncompleted portion thereof.
D. To obtain specific performance, an injunction or any other appropriate equitable remedy.
E. To money damages.
F. To exercise any other appropriate right or remedy at law or in equity.
For the purpose of this agreement, breach shall include, but shall not be limited to, the following,
whether or not the time has yet arrived for performance of an obligation under this agreement: a
statement by the Vendor to the Authority indicating that it cannot or will not perform any one or
more of its obligations under this agreement; any act or omission of the Vendor or any other
occurrence which makes it improbable at the time that it will be able to perform any one or more
of its obligations under this agreement; any suspension of or failure to proceed with any part of
the work by the Vendor which makes it improbable at the time that it will be able to perform any
one or more of its obligations under this agreement; any false certification at any time by the Vendor as to any material item certified pursuant to the clauses of Part II hereof (Contractor’s Integrity Provisions), or the willful or fraudulent submission of any signed statement pursuant to such clauses which is false in any material respect; or the Vendor’s incomplete or inaccurate representation of its status with respect to the circumstances provided for in such clauses.

The enumeration in this numbered clause or elsewhere in this agreement of specific rights and remedies of the Authority shall not be deemed to limit any other rights or remedies which the Authority would have in the absence of such enumeration or act as a waiver of any other of its rights or remedies not inconsistent therewith or to stop it from exercising such other rights or remedies.

20. RIGHTS OF THE VENDOR
Inasmuch as the Vendor can be adequately compensated by money damages for any breach of this contract which may be committed by the Authority, the Vendor expressly agrees that no fault, act or omission of the Authority shall constitute a material breach of this contract, entitling him to cancel or rescind it or to suspend or abandon performance.

21. VENDOR NOT AN AGENT
This Agreement does not constitute the Vendor the agent or representative of the Port Authority for any purpose whatsoever except as may be specifically provided in this Agreement. It is hereby specifically acknowledged and understood that the Vendor, in performing its services hereunder, is and shall be at all times an independent Vendor and the officers, agents and employees of the Vendor shall not be or be deemed to be agents, servants or employees of the Port Authority.

22. ASSIGNMENTS
The Vendor shall not delegate, assign, or otherwise transfer this contract or any rights or obligations hereunder or any monies due or to become due hereunder without the express written consent of the Port Authority. The Vendor may, however, subcontract portions of the work to be performed provided that the Engineer expressly so permits in writing. No subcontractor shall have any rights against the Port Authority and all subcontractors shall be deemed the Vendor's agents.

No delegation of performance by the Vendor shall relieve the Vendor either of the duty to perform or of any liability for breach.

23. NO ESTOPPEL OR WAIVER
The Authority shall not be precluded or estopped by any acceptance, certificate or payment, final or otherwise, issued or made under this contract or otherwise issued or made by it, the Engineer, or any officer, agent or employee of the Authority, from showing at any time the true amount and character of work performed, or from showing that any such acceptance, certificate or payment is incorrect or was improperly issued or made; and the Authority shall not be precluded or estopped, notwithstanding any such acceptance, certificate or payment, from recovering from
the Vendor any damages which it may sustain by reason of any failure on his part to comply
strictly with this contract, and any moneys which may be paid to him or for his account in excess
of those to which he is lawfully entitled.

Neither the acceptance of the work or any part thereof, nor any payment therefore, nor any order
or certificate issued under this contract or otherwise issued by the Authority, the Engineer, or any
officer, agent or employee of the Authority, nor any permission or direction to continue with the
performance of work, nor any performance by the Authority of any of the Vendor's duties or
obligations, nor any aid lent to the Vendor by the Authority in his performance of such duties or
obligations, nor any other thing done or omitted to be done by the Authority, its commissioners,
officers, agents or employees shall be deemed to be a waiver of any provisions of this contract or
of any rights or remedies to which the Authority may be entitled because of any breach thereof,
excepting only a resolution of its commissioners, providing expressly for such waiver. No
Cancellation, rescission or annulment hereof, in whole or as to any part of the work, because of
any breach hereof, shall be deemed a waiver of any money damages to which the Authority may
be entitled because of such breach. Moreover, no waiver by the Authority of any breach of this
contract shall be deemed to be a waiver of any other or any subsequent breach.

24. COMPLIANCE WITH RULES AND REGULATIONS

The vehicles/units to be provided under this Contract shall comply with all the latest regulations
and provisions of federal, State of New York, and State of New Jersey, ordinances, codes, rules,
regulations, orders, permits, and licenses and with fire underwriter's requirements, which would
be applicable if the Port Authority were a private corporation and as if these units were for over-
the-road use, except that, where the requirements set forth in the specifications are more
stringent, those specifications shall control.

In addition, the completed units shall comply with the latest published codes and regulations of
the following:

- All applicable requirements set forth in 49CFR
- DOT (Department of Transportation), requirements
- FMVSS (Federal Motor Vehicle Safety Standards)
- Regulations of the States of New York and New Jersey
- ASME (American Society of Mechanical Engineers)
- SAE (Society of Automotive Engineers)
- National Electrical Code
- NFPA (National Fire Protection Association)
- National Fluid Power Association

Port Authority regulations entitled: "The Port Authority Airport Rules And Regulations." A
copy of “The Port Authority Airport Rules And Regulations” may be obtained by calling
Aviation Technical Services at (212) 435-3696 or a copy may be obtained from the websites:

25. ERRORS AND OMISSIONS

If the Vendor discovers any errors or omissions in the specifications, in the drawings or in the work undertaken and executed by him, he shall immediately notify the Engineer and the Engineer shall promptly verify the same. If, with the knowledge of such error or omission and prior to the correction thereof, the Vendor proceeds with any work affected thereby, he shall do so at his own risk, and the work so done shall not be considered as work done under and in performance of this agreement unless and until approved and accepted.

26. MATERIALS AND WORKMANSHIP

All equipment furnished and the parts thereof shall be the manufacturers’ latest listed and published stock models, except where modification is specifically permitted or required. The equipment and parts shall meet all the applicable requirements of the Specifications.

Any reference to a specific product in these Contract Documents is to indicate approved products or details. Other products or details will be considered suitable if they meet the intent of the performance characteristic cited or are comparable to the product or detail cited. The Port Authority shall be the sole judge of as to whether a proposed substitution will be approved, and no substitution shall be ordered or utilized without the Engineer’s prior written approval. The Port Authority may require the Contractor to furnish, at the Contractor’s expense, a special performance guarantee or other assurance with respect to any approved substitution. Furthermore, the approval of any substitute proprietary item or make shall not in any way entitle the Contractor to additional compensation therefor. If the Contractor fails to deliver a suitable approved equal that is acceptable to the Engineer, then the Contractor shall supply the item specified herein, as more fully described in the Specifications.

Brand name or equal descriptions are used as a means to define the performance or other salient characteristics of procurements. In the subject solicitation, even if the phrase “or approved equal” is inadvertently omitted, it is implied after any brand name.

All materials used shall be new unless otherwise specified. All design, workmanship, and materials shall at all times and places be subject to the inspection of the Engineer. Should they fail to meet his approval, they shall be forthwith made good, replaced, or corrected (as the case may be) by the Vendor at its own expense.

27. APPROVAL BY ENGINEER

The approval by the Engineer of any workmanship, materials, drawings, designs, or details of construction of the unit shall be construed merely to mean that, at that time, the Engineer knows of no good reason for objecting thereto, and no such approval shall release the Vendor from his full responsibility for the satisfactory construction and operation of the unit.
The decision of the Engineer shall be final and binding on the parties as to the quality, acceptability, and fitness of all parts of the unit, as to conformity of the unit with, and as to the interpretation of, the specifications, drawings, and technical requirements of this agreement and as to all questions in connection with the work hereunder.

Whenever the words "approved," "required," "satisfactory," "necessary," "equal," or words of similar import are used in this agreement, they shall mean approved or required by the Engineer and satisfactory, necessary, or equal in the opinion of the Engineer.

28. VEHICLE WARRANTIES

The Vendor warrants and guarantees each vehicle against any defects in design, workmanship, and materials and against failure to operate satisfactorily for a minimum period of one (1) year from the date on which the vehicle is placed in service, other than defects or failures shown by the Vendor to have arisen solely from accident or abuse occurring after acceptance by the Engineer, and agrees to replace any part or parts, which in the opinion of the Engineer shall fail for the above reasons. In addition, if at any time after the above warranty periods any defects arise or are found in the design of the vehicles, the Vendor shall inspect the causes in detail at a Port Authority facility, report its findings to the Engineer, and correct the defects as required and in agreement with the Engineer. All repairs shall be performed within twenty-four (24) hours of reporting a warranty repair item, and if a longer time is needed because of parts, redesign, or testing, additional time may be granted if the Vendor demonstrates that it is taking every possible step to resolve all issues and submits a letter indicating an estimated completion date. The Vendor shall be responsible for all costs (including parts, labor, vehicle transportation charges, etc.) required to perform any warranty work or to correct any defects. If any warranty work or work required to correct any defects requires transporting the vehicle back to the Vendor's plant or to any other shop, the Vendor shall be responsible for all costs and making the proper arrangements in a timely manner. In addition, after delivery of each vehicle, if the vehicle is to be transported out of any Port Authority facility, the Vendor shall be fully as responsible for each complete vehicle in his possession as he was prior to its receipt by the Authority and shall provide all vehicle liability insurance as required by the Port Authority, covering the vehicle(s) until re-delivery to and acceptance.

Notwithstanding the specific requirements of this agreement, any inspection or acceptance of the vehicle, the foregoing warranty, or the existence of any patent or trade name, the Vendor nevertheless warrants and represents that the vehicle shall be of the best quality and shall be fully fit for the purposes for which it is to be used. The foregoing warranty shall not, however, be a limitation on any rights, which the Port Authority would have, either expressed or implied, in connection with this agreement in the absence of such guaranty, the said guaranty being given only for the greater assurance of the Port Authority.

In the event of a failure which places the vehicle in an "out of service" status, as determined by the Engineer, the Vendor agrees to perform an inspection within twenty-four (24) hours after the Engineer notifies the Vendor of such failure. Upon determination by the Engineer that the failure is to be repaired by the Vendor under this warranty, the Vendor agrees to either replace the failed component or repair it, the repair of same to commence within twenty-four (24) hours.
after the determination of the Engineer. In the event that the component is to be replaced, the Vendor agrees to have the replacement item shipped within twenty-four (24) hours after the Engineer's determination.

29. AVAILABILITY OF SPARE PARTS

The Vendor warrants that it shall maintain, or have maintained, a stock of spare parts at inventory levels for the period described in the immediately following paragraph.

The Vendor shall itself, or through a dealer, supply (at prices not in excess of those charged any other owners of vehicles), spare parts required to support the units to be supplied hereunder for ten (10) years from the date of delivery of the last vehicle. These parts shall be available within seventy-two (72) hours of placement of an order. In order to meet this requirement, the Vendor may maintain a spare parts outlet or contract with a customs broker to expedite the customs clearance of foreign parts. It shall, however, remain the responsibility of the Vendor to meet the seventy-two (72) hour delivery requirement.

30. PARTS INTERCHANGEABILITY:

All components of each type of unit in this order shall be identical; i.e., alternators, filters, distributors, hydraulic pumps, hydraulic valves, etc.

31. PRINCIPLES OF DESIGN

These vehicles must be designed for maximum safety, reliability, and ease of operation. Every effort is to be taken by the manufacturer to assure that the principles of human Engineering and ergonomics are designed into the functional controls of the vehicle. Systems on the unit shall incorporate the use of fail-safe design to assure maximum safety while in operation. Adequate redundancy must be built into any system as deemed necessary. Specific applications of these principles will be evidenced in design criteria including:

A. The vehicle weight distribution shall be properly distributed with a laden or unladen vehicle to provide the proper loading on all axles, and provide the vehicle with the proper traction, steering, other driveability factors.

B. All bolts, washers, and nuts used to assemble all structural components and any high fatigue parts shall be Grade 8 with elastic self-locking type nuts. All bolts, washer, and nuts used shall be manufactured in the United States of America.

C. All electronic system wiring shall be properly shielded as required to assure that circuits are not affected by other vehicle systems or any external interferences.

D. All vehicle components and systems shall operate without being affected by interference damage or disruption including detrimental effects or interference to on-board computer modules from either vehicle generated noise, or stray Electromagnetic Frequency (“EMF”) or Radiomagnetic Frequency (“RMF”) fields encountered from any airport operations. EMF and RMF noise sources that may be generated by the vehicle, especially if such noise is detrimental to aircraft, Air Traffic Control, or air navigation equipment, shall be shielded. In the event a unit is found to create or encounter EMF or RMF problems, the Vendor will be responsible for remedying the problem to the satisfaction of the Authority.
E. All systems shall be designed to allow quick and efficient operation of the unit. Pneumatic, electrical, electronic, hydraulic, and other systems shall be operational within a minimum amount of temperature stabilization, and accumulator or system build-up.

F. All operating controls, light switches, and controls for auxiliary equipment shall be clearly and permanently marked and identified by means of resistant plastic identification plates with recessed lettering of a contrasting color. Should be powered to run with the ignition in a key on position.

G. The use of pilot lights or indicators for all controls or switches.

H. Venting systems for vehicle fuel, coolant, hydraulics, etc., shall not discharge or vent over any equipment, but shall direct such overflows to a suitable recovery system in order not to cause an environmental spill.

I. All emergency shut-off valves shall be properly identifiable, as to location and operation.

J. All controls shall be immediately identifiable as to the correct positioning by logic of operation or clear indications.

K. All gauges shall be suitably marked as to the intended purpose and shall be easily visible by the operator.

L. All systems requiring servicing shall be equipped with approved self-contained checking devices. The preferred check device for hydraulic system reservoir shall be sight gauges that are clearly marked to show service level and type of fluid. Pressure gauges shall be installed on accumulators, on all other components, or elsewhere as required with easily connectable service ports in close proximity.

M. Diesel engine(s) shall be approved for continuous operation using fuel meeting specifications for No. 1 or No. 2 diesel as set forth in ASTM D-976 combined with 20% Biodiesel meeting specification ASTM D 6751 for Biodiesel fuel. If these fuels require additives or involve restrictions, all such requirements, restrictions, and concerns are to be submitted in writing with the bid for PATH’s approval. Instructions for such additives shall be detailed in a placard or decal located at the fuel fill location as close to the fill neck as practical.

N. Steps, stairways, ladders walkways handholds, handrails, and used to access the cab, maintenance and operational areas or other parts of the equipment shall conform to the most recent edition of SAE J185 – Access Systems for Off-Road Machines, using the ‘preferred’ dimensions offered in this standard.

32. ACCESSIBILITY OF COMPONENTS

All parts of the unit and auxiliary equipment shall be easily accessible for inspection, operation, and maintenance. All electrical components shall be centrally located and enclosed in an airtight weatherproof electrical box. All air system components shall also be centrally located and marked. All components shall be readily removable and replaceable. These features are considered mandatory and the unit will be closely inspected to assure conformance with these requirements.

If, in the opinion of the Engineer, any part or component is not readily accessible, removable, or replaceable, the Engineer may require the Vendor to correct these deficiencies at the Vendor’s own expense, before acceptance. Any departure from the requirements of these specifications shall be immediately remedied by the Vendor at his own expense.
33. MARKING OF CONTROLS
All operating controls, light switches, and accessory equipment that may be installed on the unit shall be clearly and permanently marked and identified by a metal or oil resistant plastic identification plates with stamped recessed lettering filled with a contrasting color paint. The lettering for the instrument panel controls shall be approximately one-half (1/2") inch high and approximately one (1") inch high for all other locations. The above shall apply to all controls. All switches shall be "on" in the up position.

34. IDENTIFICATION CARDS
Each delivered vehicle shall have a 5" x 9" index card affixed to the inside of the windshield. This card shall contain the following information and shall be visible from the outside of the vehicle:
Vendor’s Name
Purchase Order Number
Make & Model
Port Authority Engineer’s Name (listed on purchase order)
Vehicle Identification Number (VIN)

35. SERVICING BEFORE DELIVERY (MAKE-READY)
Prior to delivery, each vehicle shall be completely serviced by the Vendor in its shop, including engine tune-ups, lubrication, and wheel alignment. Equipment with water-cooled engines being delivered shall be protected with permanent anti-freeze to a minimum of -40°F. The anti-freeze shall contain corrosion inhibitors. All systems on the unit shall be fully serviced and filled with all required fluids, and be ready for the full in-service operation. A copy of the Vendor’s final inspection form shall be forwarded to the Engineer with the invoice.

36. CERTIFICATE OF ORIGIN
The Vendor shall submit to the Engineer seven (7) days before delivery of each unit, the certificate of origin for a vehicle. This certificate shall be fully completed so as to enable the transfer of ownership to the Port Authority of NY & NJ.

If the Vendor or the truck dealer is based in the state of New York, the Vendor shall also submit with the above certificate of origin, the New York State Certificate of Sale, form MV-50, fully completed.

If the Vendor or the truck dealer is based in the state of New Jersey, the Vendor, in addition to submitting the above certificate of origin, must conform to New Jersey state motor vehicle requirements.

The above document(s) shall be sent to:
The Port Authority of NY & NJ
Port Authority Technical Center
Central Automotive Division
241 Erie Street, Room 307

46
Jersey City, New Jersey 07310-1397
Attn: Mark A. Gernavage, Engineer

All licensing documents shall be sent to the above address but shall show the legal address as follows:

The Port Authority of NY & NJ
4 World Trade Center
150 Greenwich Street
New York, NY 10007

37. INSPECTION AND ACCEPTANCE TESTING

Inspection of workmanship, materials, designs, and performance of the unit may be made at the Vendor's factory at the sole discretion of the Engineer. The Port Authority will pay all expenses of its inspectors. The Engineer will inspect each unit delivered to insure that the unit meets all requirements of the specifications. The Engineer will also conduct acceptance testing utilizing the tests set forth in the specifications. Upon satisfactory completion of the inspection and the acceptance testing, the Engineer will advise the Vendor, in writing, of vehicle acceptance. Any defect or failure to comply with any requirements of these specifications shall be immediately remedied by the Vendor at its own expense prior to retesting of the unit.

38. QUALITY CONTROL

Critical components and the complete unit must demonstrate compliance with these specifications. The Vendor shall be responsible for assuring the quality control of his suppliers and shall arrange for the required tests, certifications, and for the test location and all equipment required for testing. The Vendor shall notify the Engineer when major components are ready for testing, and the Engineer will decide whether representatives of the Authority will be present at the tests.

The Vendor shall develop and submit for the Engineer’s approval test plans covering all tests required to be performed hereunder. All such tests shall be performed in accordance with the approved plans.

If the unit or any component fails a test, the unit or component must be retested when the deficiencies have been corrected. The Engineer may at his sole discretion require extra testing of the failed unit or component or of all units or components to assure that the noncompliance was not the result of a design error or indicative of the inability of the unit or component to withstand the intended service.

The Port Authority shall have the option of witnessing the following specific tests on randomly selected finished vehicles to assure that they meet minimum performance requirement:

A. Vehicle driveability to include vehicle weight distribution, braking, top speed, etc.
B. Interlock and parking brake system
C. Other tests as specified elsewhere in these specifications, required, or as requested by the Engineer.
39. RISKS ASSUMED BY THE VENDOR

To the extent permitted by law, the Contractor shall indemnify and hold harmless the Port Authority, its Commissioners, Directors, agents, servants, officers, representatives and employees from and against all claims and demands, just or unjust, of third persons (including Contractor’s agents, servants, officers, representatives and employees) arising out of or in any way connected to or alleged to arise out of or alleged to be in any way connected with the Contract and all other services and activities of the Contractor under this Contract and for all expenses incurred by it and by them in the defense, settlement or satisfaction thereof, including without limitation thereto, claims and demands for death, for personal injury or for property damage, direct or consequential, whether they arise out of or are in any way connected to the Contractor’s operations or to its performance of work under this Contract, or arise out of the acts or omissions of the Contractor, the Port Authority, its Commissioners, Directors, agents, servants, officers, representatives or employees, third persons (including Contractor’s agents, servants, officers, representatives and employees), or from the acts of God or the public enemy, or otherwise, including claims and demands of any local jurisdiction against the Port Authority in connection with this Contract.

The Contractor assumes the following risks, whether such risks arise out of or are in any way connected to the Contractor’s operations or to its performance of work under this Contract, or arise out of acts or omissions (negligent or not) of the Contractor, the Port Authority or third persons (including agents, servants, officers, representatives, Commissioners, Directors and employees of the Port Authority and the Contractor) or from any other cause, excepting only risks occasioned solely by affirmative willful acts of the Port Authority done subsequent to the opening of proposals on this Contract, and shall to the extent permitted by law indemnify the Port Authority for all loss or damage incurred in connection with such risks:

a. The risk of any and all loss or damage to Port Authority property, equipment (including but not limited to automotive and/or mobile equipment and component parts), materials and possessions, on or off the premises, the loss or damage of which shall arise out of the Contractor's operations hereunder. The Contractor shall if so directed by the Port Authority, repair, replace or rebuild to the satisfaction of the Port Authority, any and all parts of the premises or the Facility which may be damaged or destroyed by the acts or omissions of the Contractor, its officers, agents, or employees and if the Contractor shall fail so to repair, replace, or rebuild with due diligence the Port Authority may, at its option, perform any of the foregoing work and the Contractor shall pay to the Port Authority the cost thereof.

b. The risk of any and all loss or damage of the Contractor's property, equipment (including but not limited to automotive and/or mobile equipment, and component parts) materials and possessions on the Facility.

c. The risk of claims, whether made against the Contractor or the Port Authority, for any and all loss or damages occurring to any property, equipment (including but not limited to automotive and/or mobile equipment and component parts), materials and possessions of the Contractor's agents, employees, materialmen and others performing work hereunder.
d. The risk of claims for injuries, damage or loss of any kind whether just or unjust of third persons (including agents, servants, officers, representatives, Commissioners, Directors and employees of the Port Authority and the Contractor) arising or alleged to arise out of or in connection with the Contractor’s operations or its performance of work hereunder, whether such claims are made against the Contractor or the Port Authority.

If so directed, the Contractor shall at its own expense defend any suit based upon any such claim or demand, even if such suit, claim or demand is groundless, false or fraudulent, and in handling such shall not, without obtaining express advance permission from the General Counsel of the Port Authority, raise any defense involving in any way the jurisdiction of the tribunal over the person of the Port Authority, the immunity of the Port Authority, its Commissioners, officers, agents or employees, the governmental nature of the Port Authority or the provision of any statutes respecting suits against the Port Authority.

Neither the requirements of the Port Authority under this Contract, nor of the Port Authority of the methods of performance hereunder nor the failure of the Port Authority to call attention to improper or inadequate methods or to require a change in the method of performance hereunder nor the failure of the Port Authority to direct the Contractor to take any particular precaution or other action or to refrain from doing any particular thing shall relieve the Contractor of its liability for injuries to persons or damage to property or environmental impairment arising out of its operations.

The making of final payment shall not release the Vendor from his obligations under this numbered clause. Moreover, neither the enumeration in this numbered clause nor the enumeration elsewhere in this contract of particular risks assumed by the Vendor or of particular claims for which he is responsible shall be deemed (1) to limit the effect of the provisions of this numbered clause or of any other clause of this contract relating to such risks or claims, (2) to imply that he assumes or is responsible for risks or claims only of the type enumerated in this numbered clause or in any other clause of this contract, or (3) to limit the risks which he would assume or the claims for which he would be responsible in the absence of such enumerations.

40. HIGH SECURITY AREA

Services under the Contract may be required in designated secure areas, as the same may be designated by the Engineer from time to time (“Secure Areas”). The Port Authority shall require the observance of certain security procedures with respect to Secure Areas, which may include the escort to, at, and/or from said high security areas by security personnel designated by the Contractor or any subcontractor’s personnel required to work therein. All personnel that require access to designated secure areas who are not under positive escort by an authorized individual will be required to undergo background screening and personal identity verification.

Forty-eight (48) hours prior to the proposed performance of any work in a Secure Area, the Vendor shall notify the Engineer. The Vendor shall conform to the procedures as may be established by the Engineer from time to time and at any time for access to Secure Areas and the escorting of personnel hereunder. Prior to the start of work, the Vendor shall request a description from the Engineer of the Secure Areas which will be in effect on the commencement date. The description of Secure Areas may be changed from time to time and at any time by the Engineer during the term of the Contract.
41. NOTIFICATION OF SECURITY REQUIREMENTS

The Authority has the responsibility of ensuring safe, reliable and secure transportation facilities, systems, and projects to maintain the well-being and economic competitiveness of the region. Therefore, the Authority reserves the right to deny access to certain documents, sensitive security construction sites and facilities (including rental spaces) to any person that declines to abide by Port Authority security procedures and protocols, any person with a criminal record with respect to certain crimes or who may otherwise pose a threat to the construction site or facility security. The Authority reserves the right to impose multiple layers of security requirements on the Contractor, its staff and subcontractors and their staffs depending upon the level of security required, or may make any amendments with respect to such requirements as determined by the Authority.

These security requirements may include but are not limited to the following:

- **Execution of Port Authority Approved Non-Disclosure and Confidentiality Agreements**
  
  At the direction of the Port Authority, the Contractor shall be required to have its principals, staff and/or subcontractor(s) and their staff, execute Port Authority approved non-disclosure agreements.

- **Contractor/ Subcontractor identity checks and background screening**
  
  The Port Authority’s designated background screening provider may require inspection of not less than two forms of valid/current government issued identification (at least one having an official photograph) to verify staff’s name and residence; screening federal, state, and/or local criminal justice agency information databases and files; screening of any terrorist identification files; access identification to include some form of biometric security methodology such as fingerprint, facial or iris scanning, or the like.

  The Contractor may be required to have its staff, and any subcontractor’s staff, material-men, visitors or others over whom the Contractor/subcontractor has control, authorize the Authority or its designee to perform background checks, and a personal identity verification check. Such authorization shall be in a form acceptable to the Authority. The Contractor and subcontractors may also be required to use an organization designated by the Authority to perform the background checks.

As of January 29, 2007, the Secure Worker Access Consortium (S.W.A.C.) is the only Port Authority approved provider to be used to conduct background screening and personal identity verification, except as otherwise required by federal law and/or regulation (such as Security Identification Display Area (SIDA), the federal regulatory requirements for personnel performing Work at aviation facilities and the Transportation Worker Identification Credential for personnel performing in secure areas at Maritime facilities). Information about S.W.A.C., instructions, corporate enrollment, online applications, and location of processing centers can be found at [http://www.secureworker.com](http://www.secureworker.com), or S.W.A.C. may be contacted directly at (877) 522-7922 for more information and the latest pricing. The cost for said background checks for staff that pass and are granted a credential shall be reimbursable to the Contractor (and its subcontractors) as an out-of-pocket expense as provided herein. Staff that are rejected for a credential for any reason are not reimbursable.
• **Issuance of Photo Identification Credential**

No person will be permitted on or about the Authority construction site or facility (including rental spaces) without a facility-specific photo identification credential approved by the Authority. If the authority requires facility-specific identification credential for the Contractor’s and the subcontractor’s staff, the Authority will supply such identification at no cost to the Contractor or its subcontractors. Such facility-specific identification credential shall remain the property of the Authority and shall be returned to the Authority at the completion or upon request prior to completion of the individual’s assignment at the specific facility. It is the responsibility of the appropriate Contractor or subcontractor to immediately report to the Authority the loss of any staff member’s individual facility-specific identification credential. The Contractor or subcontractor shall be billed for the cost of the replacement identification credential. Contractor’s and subcontractor’s staff shall display Identification badges in a conspicuous and clearly visible manner, when entering, working or leaving an Authority construction site or facility.

Employees may be required to produce not less than two forms of valid/current government issued identification having an official photograph and an original, un laminated social security card for identify and SSN verification. Where applicable, for sensitive security construction sites or facilities, successful completion of the application, screening and identify verification for all employees of the Contractor and subcontractors shall be completed prior to being provided a S.W.A.C. ID Photo Identification credential.

• **Access control, inspection, and monitoring by security guards**

The Authority may provide for Authority construction site or facility (including rental spaces) access control, inspection and monitoring by Port Authority Police or Authority retained contractor security guards. However, this provision shall not relieve the Contractor of its responsibility to secure its equipment and work and that of its subconsultant/subcontractor’s and service suppliers at the Authority construction site or facility (including rental spaces). In addition, the Contractor, subcontractor or service provider is not permitted to take photographs, digital images, electronic copying and/or electronic transmission or video recordings or make sketches on any other medium at the Authority construction sites or facilities (including rental spaces), except when necessary to perform the Work under this Contract, without prior written permission from the Authority. Upon request, any photograph, digital images, video recording or sketches made of the Authority construction site or facility shall be submitted to the Authority to determine compliance with this paragraph, which submission shall be conclusive and binding on the submitting entity.

• **Compliance with the Port Authority Information Security Handbook**

The Contract may require access to Port Authority information considered Protected Information (“PI”) as defined in the Port Authority Information Security Handbook (“Handbook”), dated October, 2008, corrected as of November 14, 2013, and as may be further amended. The Handbook and its requirements are hereby incorporated into this agreement and will govern the possession, distribution and use of PI if at any point during the lifecycle of the project or solicitation it becomes necessary for the Contractor to have access to PI. Protecting sensitive information requires the application of uniform safeguarding measures to prevent unauthorized disclosure and to control any authorized disclosure of this information within the Port Authority or when released by the Port Authority to outside entities. The following is an outline of some of the procedures, obligations and directives contained in the Handbook:
require that the Contractor and subcontractors, when appropriate, sign Non-Disclosure and Confidentiality Agreements (NDAs), or an Acknowledgment of an existing NDA, provided by the Authority as a condition of being granted access to Protected Information categorized and protected as per the Handbook;

(2) require that individuals needing access to PI be required to undergo a background check, pursuant to the process and requirements noted in § 3.2 of the Information Security Handbook.

(3) require Contractors and commercial enterprises to attend training to ensure security awareness regarding Port Authority information;

(4) specific guidelines and requirements for the handling of PI to ensure that the storage and protection of PI;

(5) restrictions on the transfer, shipping, and mailing of PI;

(6) prohibitions on the publication, posting, modifying, copying, reproducing, republishing, uploading, transmitting, or distributing PI on websites or web pages. This may also include restricting persons, who either have not passed a pre-screening background check, or who have not been granted access to PI, from viewing such information;

(7) require that PI be destroyed using certain methods, measures or technology pursuant to the requirements set forth in the Handbook;

(8) require the Contractor to mandate that each of its subcontractors maintain the same levels of security required of the Contractor under any Port Authority awarded contract.

(9) prohibit the publication, exchange or dissemination of PI developed from the project or contained in reports, except between Contractors and subcontractors, on a need to know basis, without prior approval of the Port Authority;

(10) require that PI only be reproduced or copied pursuant to the requirements set forth in the Handbook.

• Audits for Compliance with Security Requirements

The Port Authority may conduct random or scheduled examinations of business practices under this section entitled “NOTIFICATION OF SECURITY REQUIREMENTS” and the Handbook in order to assess the extent of compliance with security requirements, Confidential Information procedures, protocols and practices, which may include, but not be limited to, verification of background check status, confirmation of completion of specified training, and/or a site visit to view material storage locations and protocols.

42. EQUAL EMPLOYMENT OPPORTUNITY, AFFIRMATIVE ACTION, NON-DISCRIMINATION

The Contractor shall take all necessary and reasonable steps to ensure non-discrimination in the performance and administration of all aspects of this Contract.

A. Contractor hereby agrees that no person on the ground of race, color, national origin, creed/religion, sex, age or handicap/disability shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the furnishing of goods or services or in the selection and retention of subcontractors and/or vendors under this Contract. Contractor shall also ascertain and comply with all applicable
federal, state and local laws, ordinances, rules, regulations, and orders that pertain to equal employment opportunity, affirmative action, and non-discrimination in employment.

B. Contractor agrees that these “Non-Discrimination Requirements” are a binding part of this Contract. Without limiting the generality of any other term or provision of this Contract, in the event the Authority, or a state or federal agency finds that the Contractor or any of its subcontractors or vendors has not complied with these “Non-Discrimination Requirements”, the Authority may cancel, terminate or suspend this Contract in whole or in part in accordance with these Automotive Procurement Standard Contract Terms and Conditions.

C. Contractor agrees to cooperate fully with the Authority’s investigation of allegations of discrimination. Cooperation includes, but is not limited to, allowing the Authority to question employees during the investigation of allegations of discrimination, and complying with directives that the Authority or the State or Federal government deem essential to ensure compliance with these “Non-Discrimination Requirements.”

43. SHIPMENT

The Vendor shall ship the units under bills of lading designating the consignee as the Port Authority of New York and New Jersey, c/o Vendor, said bills of lading to provide that the Vendor will pay the insurance and freight charges, and the Port Authority will be the named insured on said insurance but risk of loss or damage until delivery shall be the Vendor’s. In such case, the Vendor's obligations under the clause entitled "Risks Assumed by the Vendor" shall not be impaired.

If the Vendor’s plant is located more than four hundred (400) miles from the designated delivery point, the Vendor shall ship the unit(s) by railroad or flatbed truck and the Vendor's obligations under the clauses entitled, "delivery" and "risks assumed by the Vendor" shall not be impaired.

If the Vendor's plant is more than four hundred (400) miles from the designated delivery point, at the Vendors' request the Engineer may approve over-the-road transportation of the completed unit to the Port Authority, with an associated cost savings. In all such instances, the Vendor must utilize his own drivers, or the services of a licensed and bonded driveaway service having a Federal Motor Carrier Safety Administration rating of not less than "Satisfactory". In addition, his driver or the driveaway service must be specifically instructed, in writing, with copies provided to the Engineer prior to approval, as to all truck chassis, power train, tire, and other manufacturers’ restrictions on speed, fuel, continuous hours of operation, and any other 'break-in' or operational restrictions. A driver's log and receipts shall be provided demonstrating compliance with the above stated restrictions. Finally, the vehicle must be cleaned, fueled, and prepared in accordance with requirements of this contract after transportation and prior to delivery to the Port Authority.

44. NO THIRD PARTY RIGHTS

Nothing contained in this agreement is intended for the benefit of third persons except to the extent that this agreement specifically provides otherwise by use of the words "benefit" or "direct right of action."
45. DELIVERY

The Vendor shall deliver vehicle(s) to the delivery location(s) indicated in the table located in Paragraph 51 hereof; or, to any other location as directed by the Engineer within a fifty (50) mile radius of the Statue of Liberty. If the Engineer requests for the Vendor to drop-ship the cab-chassis’ or vehicle(s) to an alternate delivery location(s), the Vendor shall be responsible to make all necessary arrangements for the delivery(ies), and the Vendor and the Engineer shall mutually agree on any cost adjustments for delivery to the alternate delivery location.

The Vendor shall deliver the unit(s) complete and ready for service, within two hundred and seventy-five (275) calendar days commencing from the Port Authority Purchase Order Date after receipt, by it, of the acceptance of its proposal.

The Vendor shall develop and maintain a weekly updated manufacturing and delivery schedule. Upon request, the Vendor shall submit to the Engineer, within two (2) days of the request, a copy of the updated manufacturing and delivery schedules.

The vehicles shall be shipped for sidewalk delivery to the location(s) indicated in the table in Paragraph 51 hereof. Sidewalk delivery is defined as the Vendor's responsibility for removing the vehicles from the truck and placement onto the ground at a location designated by receiving personnel.

Vehicles shipped by other than the Vendor's own truck shall not abrogate this responsibility. The Port Authority shall not be responsible for re-delivery charges as a result of failure to comply with this clause. Port Authority personnel will not be available to assist in off-loading vehicles.

The Vendor shall notify the Engineer of delivery, at least three (3) working days in advance. The deliveries shall be made to the location(s) indicated in the table at the end of this Appendix.

All deliveries shall be made during the hours of 9:00 am to 2:00 pm Monday through Friday excluding holidays celebrated in the state of delivery. The equipment shall be deemed to have been delivered only if it is complete and in readiness for use and if it meets with the acceptance of the Engineer as elsewhere provided in this agreement. The times above-provided for delivery may be extended (subject, however, to the provisions of this numbered clause) only if in the opinion of the Engineer the Vendor is necessarily delayed in delivery solely and directly by a cause which meets both of the following conditions:

A. Such cause is beyond the Vendor's control and arises without his fault.
B. Such cause arises after the opening of proposals on this agreement and neither was, not could have been, anticipated by investigation before such opening.

The Vendor shall provide the above conditions in writing and shall have an approval by the Engineer in writing. In any event, even though a cause of delay meets the above conditions, an extension shall be granted by the Engineer only to the extent that:

A. The delivery is actually and necessarily delayed.
B. The effect of such cause cannot be anticipated and avoided or mitigated by the exercise of all reasonable precautions, efforts, and measures (including planning, scheduling, and re-scheduling) whether before or after the occurrence of the cause of delay.

Notwithstanding the above, no extension of time shall be granted for a delay which would not have affected the time of delivery were it not for the fault of the Vendor or for other delay for which the Vendor is not entitled to an extension of time.

Any reference herein to the Vendor shall be deemed to include subcontractors and materialmen, whether or not in privity of contract with the Vendor, and employees of all the foregoing. Therefore, the Vendor shall be charged with a delay caused by a subcontractor, materialmen or their employees.

The period of any extension of time shall be that necessary to make up the time actually lost, subject to the provisions of this numbered clause, and shall be only for those units actually delayed. The Engineer may defer all or part of his decision on an extension, and any extension may be rescinded or shortened if it subsequently is found that the delay can be overcome or reduced by the exercise of reasonable precautions, efforts, and measures.

As a condition precedent for an extension of time, the Vendor shall give written notice to the Engineer within forty-eight hours after the time when he knows or should know of a cause which might under any circumstances result in delay for which he claims or may claim an extension of time (including those causes for which the Authority is responsible or has knowledge of). The written notice shall specifically state that an extension is or may be claimed and shall identify such cause and describe, as fully as practicable at the time, the nature and expected duration of the delay and its effect on the delivery of various units. Since the possible necessity for an extension of time may materially alter the scheduling, plans, and other actions of the Authority, and since, with sufficient opportunity, the Authority might, if it so elects, attempt to mitigate the effect of a delay for which an extension of time might be claimed, and since merely oral notice may cause disputes as to the existence or substance thereof, the giving of written notice as above required shall be of the essence of the obligations of the Vendor, and failure of the Vendor to give written notice as above required shall be a conclusive waiver of an extension of time.

It shall in all cases be presumed that no extension, or further extension, of time is due unless the Vendor shall affirmatively demonstrate to the satisfaction of the Engineer that it is due. To this end, the Vendor shall maintain adequate records supporting any claim for an extension of time and, in the absence of such records, the foregoing presumption shall be deemed conclusive.

It is the intent of this agreement that the Vendor shall assume the responsibility for manufacturing the units in a manner acceptable to the Engineer and, consequently, no disapproval by the Engineer of any drawings submitted by the Vendor or of any other act or omission of the Vendor shall be cause for an extension of time.

The Vendor assumes the risk of damages due to delay arising from any acts and causes whatsoever, including, but not limited to, wrongful acts and omissions of the Authority, its
officers, employees, Vendors, and agents, and its sole remedy against the Authority shall be an extension of time as set forth herein.

46. DRAWINGS, SCHEMATICS, AND FUNCTIONALITY CHARTS

Within six (6) weeks after acceptance of its bid, the Vendor shall deliver to the Engineer for approval complete and fully detailed and dimensioned drawings in triplicate showing how it proposes to construct the complete unit with all equipment, the pumping system, the weight distribution of the complete unit both loaded and unloaded, and any other drawings, sketches and calculations requested by the Engineer. These drawings shall show the size and exact location of all principal parts as well as the method of mounting and other data necessary or desirable to provide complete information on what the Vendor proposes to furnish.

The Engineer will approve the drawings or require additions or corrections to be made therein, returning a copy of those drawings on which additions or corrections are required. The Vendor shall promptly make the required additions and corrections and resubmit such drawings within ten (10) days of their return to the Vendor in triplicate to the Engineer for his approval. Each unit as finally furnished and delivered shall be in strict accordance with the drawings as finally approved. Any work performed by the Vendor before approval of the drawings relating to such work shall be at the Vendor's risk and the work so done shall not be considered as work done under and in performance of this agreement unless and until approved and accepted by the Engineer.

All drawings, parts lists, data, and other papers of any type whatsoever, whether in the form of writing, figures, or delineations, which are prepared in connection with this agreement and submitted to the Authority, shall become the property of the Authority, except to the extent that rights are reserved to others under existing valid patents and are not given the Authority under the clause hereof entitled "intellectual property". Subject to the above, the Authority shall have the right to use or permit the use of all such drawings, data, and other papers, and any oral information received by the Authority, any ideas or methods represented by such papers and information for any purpose and at any time, without other compensation than that specifically provided herein. No such papers or information shall be deemed to have been given in confidence, and any statement and/or legend to the contrary on any of the said drawings, data, or other papers shall be void and of no effect.

The Vendor's drawings shall include but not be limited to the following:

A. General layout of the complete unit, showing all dimensions of the general configuration, position of the major components, turning clearances, weight distribution (laden and unladen), and the location of the vehicle’s center of gravity.

B. Schematic of the following systems, showing all components with full make and part numbers (manufacturer's specification data shall be submitted with drawings): color coded for Identification of systems

- Electrical and electronic system(s)
- Pneumatic System(s)
● Hydraulic System(s)
● Functionality chart showing detailed operation of all systems in all modes of operation

C. Any other drawings, schematics, charts, or documentation, as requested by the Engineer.

47. OPERATION, MAINTENANCE, REPAIR DATA AND PROPRIETARY DIAGNOSTIC EQUIPMENT AND PROGRAMS

The Vendor shall provide operations, parts and service manuals. The manuals shall cover the diagnosis and repair of all vehicle systems, specifically including, chassis, powertrain, wiring, emissions, vocational equipment, and all subsystems and components. Manuals shall be provided electronically on cd-roms or USB flash drives, and if cd-roms or USB flash drives are not available, as bound “hard” copies if not available electronically, or in a format approved by the Engineer. All paper manuals shall be bound and assembled. Manuals are to be shipped per delivery instructions (see paragraph 51).

Do not ship the manuals with the unit.

The operating and maintenance or shop manual shall be the latest manufacturer's handbook, covering in detail the recommended operating, maintenance, and service procedures.

The repair or shop manual shall include detail drawings, schematic electric and hydraulic or other piping diagrams, and complete parts lists for all components of the unit and associated equipment furnished. The Vendor shall include a complete set of shop drawings as part of each shop manual.

Where components or equipment of several manufacturers have been used in assembling the unit, the manuals shall include operating, maintenance, and repair manuals and parts lists of all manufacturers, covering all of the components used.

Where the Vendor or manufacturer uses components manufactured by others in building equipment which it sells under its own trade name, the Vendor shall furnish the parts numbers and full data from the original manufacturers for all components used, as well as the part numbers it may assign to these components as being parts of its product.

In addition to the manuals, all proprietary diagnostic tools, equipment, software and programs (solely provided by the manufacturer and not available as an aftermarket product) shall be provided as recommended by the manufacturer for diagnostics and maintenance of the unit(s). When such diagnostic tools, equipment, software and programs require updating, maintenance contracts, or subscriptions, the Vendor will offer such services to the Port Authority as though the Port Authority was a dealer or distributor, at dealer or distributor pricing, for as long as the vehicles are owned by the Port Authority.
The manuals diagnostic tools, equipment, software and programs shall be furnished in sets. Each set shall include an operator's manual, parts catalog, shop repair manual, and diagnostic tools, equipment, software and programs.

The total number of sets of manuals diagnostic tools, equipment, software and programs furnished under these specifications shall be as follows:

A. Three (3) sets for the first vehicle ordered.
B. One (1) additional set for each subsequent vehicle ordered up to a maximum of nine (9) sets total (total includes A and B).

All manuals shall be in the English language. All dimensions, measurements, and other pertinent data shall be given in U.S. Standard units (i.e., inches, pounds, etc.). (foreign language terms and metric measurements shall not be accepted.)

All technical support documentation diagnostic tools, equipment, software and programs required by this section shall be delivered at least two weeks prior to the delivery of the first unit. In the event the manuals diagnostic tools, equipment, software and programs are not delivered as specified above, a retainage amount of 10% will be held by the Port Authority from any payments due under the clause entitled "Final Payments", and will be held until such time that all of the required documentation has been received to the satisfaction of the engineer.

The Vendor shall send Parts & Service Manuals diagnostic tools, equipment, software and programs directly to the Port Authority Automotive Shops, as designated at the end of this section. Vendors shall send to the engineer receipts of delivery from each shop, to expedite payment release.

The manuals diagnostic tools, equipment, software and programs shall be shipped separately and not with the vehicles. Final payment will not be released prior to receipt of these materials.

**48. PREVENTIVE MAINTENANCE INSTRUCTIONS**

In addition to the manuals specified above, the Vendor shall furnish an equal number of condensed preventive maintenance frequency and instructions for each preventative maintenance routine required for the unit. These frequencies and instructions shall consist of manufacturer's recommendations for periodic lubrication, cleaning, and other preventive maintenance, and shall be made up in a compact form to cover the particular unit delivered. The Preventative Maintenance Instructions must include a listing of all part numbers and part descriptions necessary to perform the specific preventative maintenance task such as filter descriptions and part numbers, special tools needed to perform the task, and replacement fluid specifications and quantities.

**49. PREVENTATIVE MAINTENANCE PARTS KITS**

To facilitate timely preventative maintenance of the units until parts stocking is established, the Vendor shall also provide with each unit all parts required to complete the manufacturers’ recommended preventative maintenance for at least six (6) months, two hundred (200) engine
hours, or ten thousand (10,000) miles of operation. The kit shall include all filters, belts, hoses, and other parts scheduled for replacement within the specified period. It shall not include standard automotive service fluids such as motor oil, washer fluid, coolant, etc., although if special lubricants, additives or conditioners are required during this time, such items must be included in the kit.

Each kit shall be furnished with the delivered vehicle in a sealed box or similar container with the vehicle number and the type of maintenance need plainly and conspicuously marked on the box or container. The box or container shall also have a packing list of the contents, identifying the quantity and description of each item contained inside, attached to the exterior. Preventative Maintenance Parts Kits are to be listed on delivery papers, bills of lading, or other receipt documents furnished with the vehicle.

50. TRAINING

The Vendor shall provide two (2) separate eight (8) hour training sessions on the operation of the vehicles.

The Vendor shall also provide two (2) separate eight (8) hour training sessions on the maintenance, repair, troubleshooting, and inspection of the vehicles. The Port Authority shall designate when and where the sessions will be conducted.

Prior to performing any training, the Vendor shall prepare the complete training curriculum and send it to the Engineer for approval, ten (10) days prior to the delivery of the unit(s).

The Port Authority shall designate when and where the session will be conducted, and will provide classrooms and/or shop space for the training. The instructor must speak and write in English.

51. DELIVERY INSTRUCTIONS FOR VEHICLES AND MANUALS

The Vendor shall deliver vehicle(s) and parts and service manuals directly to the Port Authority automotive shops, as designated below. Vendors shall send to the Engineer receipts showing delivery of vehicles and manuals from each shop. Payment will not be released without these documents.

<table>
<thead>
<tr>
<th>NUMBER OF VEHICLES MANUALS AND TRAINING</th>
<th>DELIVERY ADDRESS</th>
</tr>
</thead>
<tbody>
<tr>
<td>ONE (1) MANUAL</td>
<td>Port Authority of NY &amp; NJ</td>
</tr>
<tr>
<td></td>
<td>Central Automotive Division</td>
</tr>
<tr>
<td></td>
<td>241 Erie Street, Room 307</td>
</tr>
<tr>
<td></td>
<td>Jersey City, NJ 07310</td>
</tr>
<tr>
<td></td>
<td>Attn: Mark A. Gernavage</td>
</tr>
<tr>
<td></td>
<td>Tel: (201) 216-216-2367</td>
</tr>
<tr>
<td></td>
<td>Fax: (201) 216-216-2355</td>
</tr>
<tr>
<td></td>
<td>GPS: 40.731317,-74.04297</td>
</tr>
</tbody>
</table>
### 52. RIGHT TO PURCHASE ADDITIONAL UNIT(S)

As used in this clause:

“Model Year” shall mean the vehicle model year of the manufacturer of the vehicles ending on the production cut-off date for the vehicles. In the event there is no defined model year or production cut-off date for the vehicles, then for purposes of this numbered clause “model year” shall mean the period commencing on the date of the Port Authority’s acceptance of the Vendor’s bid and ending on the three hundred sixty-fifth (365th) day thereafter.

“Initial Model Year” shall mean the model year applicable on the Port Authority’s date of acceptance of the Vendor’s bid.

“Subsequent Model Years” shall mean the three (3) consecutive annual periods immediately following the initial model year.

Initial model year: By written notice from the Chief Procurement Officer or a duly authorized representative to the Vendor given at any time during the initial model year, the Port Authority shall have the right, but not the obligation, to purchase from the Vendor additional unit(s) of initial model year vehicles originally purchased hereunder at the same unit prices, conforming to the same specifications, and upon the same terms and conditions as contained herein with respect to such vehicles.

Subsequent model years: For up to three subsequent model years, by written notice from the Chief Procurement Officer or a duly authorized representative to the Vendor, the Port Authority shall have the further right, but not the obligation, to purchase from the Vendor additional unit(s) of vehicle(s) originally purchased hereunder but of subsequent model years at the same unit prices but as adjusted as set forth below, conforming to the same specifications, and upon the same terms and conditions as amended by the following:

#### A. If price changes are in effect for such vehicles during the subsequent model years, the Vendor may, within ten (10) days following the receipt of the Port Authority’s notice of exercise of this option, submit a request to the Port Authority for the application of price changes to the additional unit(s) proposed to be purchased.

#### B. All such requests must include an appropriate explanation and justification for such price changes, including the published price lists for the vehicles and their components in effect at the time of the Vendor’s original bid hereunder, the equivalent published price lists for the vehicles and their components in effect at the time of the Port Authority’s notice, and any
additional evidence which the Port Authority deems necessary for its evaluation of the Vendor’s request for the price changes.

C. No price changes shall exceed the change in the price calculated utilizing the Consumer Price Index – All Urban Customers (CPI-U); Series ID: CUURA101SA0L2; Not Seasonally Adjusted; Area: New York – Northern New Jersey – Long Island, NY-NJ-CT-PA; Item: All Items Less Shelter; Base Period: 1982-84=100, published by the Bureau Of Labor Statistics of the United States Department Of Labor (herein called the “Price Index”).

D. The Vendor shall include all backup materials and calculations with the request for increased pricing.

E. Specifically, the requested price adjustment may not exceed the percentage change in the consumer price index by using as the numerator the index three months prior to the most recent anniversary of the contract, and as the denominator the said index three months prior to the commencement of the contract. This adjustment limitation shall apply for each subsequent model year. The new prices shall remain constant for all subsequent purchases made in the same model year. In the event the said index is no longer published or its basis is changed, the parties shall in good faith choose a substitute index or agree on another basis for escalation.

Notwithstanding the above terms and conditions, within sixty (60) days following its receipt of the foregoing submission of the price adjustment request, the Port Authority shall have the right, in its sole discretion, to reject the price changes and withdraw its offer to purchase the additional unit(s). The rejection of the Vendor’s request for price changes shall be in writing.

Nothing in this numbered clause shall be construed to obligate the Port Authority to purchase any additional unit(s) of vehicle(s), or any minimum number of additional unit(s) of vehicle(s), from the Vendor, or to preclude the Port Authority from purchasing any additional vehicles from any other source whatsoever using such procurement methods as it may in its sole discretion deem appropriate to best serve the public interest.

The Vendor represents that the last day on which orders may be placed for the model year currently in effect is:

____________/___________/____________
(date to be inserted by Vendor)

Acknowledged for Vendor:

By: __________________________________
Title: _________________________________
Date: _________________________________

53. Confidential Information/Non-Publication

a. As used herein, confidential information shall mean all information disclosed to the Vendor or the personnel provided by the Vendor hereunder which relates to the Authority's and/or
PATH’s past, present, and future research, development and business activities including, but not limited to, software and documentation licensed to the Authority or proprietary to the Authority and/or PATH and all associated software, source code procedures and documentation. Confidential information shall also mean any other tangible or intangible information or materials including but not limited to computer identification numbers, access codes, passwords, and reports obtained and/or used during the performance of the Vendor’s Services under this Contract.

b. Protected Information shall mean and include collectively, as per The Port Authority of New York & New Jersey Information Security Handbook (October 15, 2008, corrected as of November 14, 2013), Confidential Information, Confidential Proprietary Information, Confidential Privileged Information and information that is labeled, marked or otherwise identified by or on behalf of the Authority so as to reasonably connote that such information is confidential, privileged, sensitive or proprietary in nature. Confidential Information shall also include all work product that contains or is derived from any of the foregoing, whether in whole or in part, regardless of whether prepared by the Authority or a third-party or when the Authority receives such information from others and agrees to treat such information as Confidential.

c. The Vendor shall hold all such Protected Information in trust and confidence for the Authority, and agrees that the Vendor and the personnel provided by the Vendor hereunder shall not, during or after the termination or expiration of this Contract, disclose to any person, firm or corporation, nor use for its own business or benefit, any information obtained by it under or in connection with the supplying of services contemplated by this Contract. The Vendor and the personnel provided by the Vendor hereunder shall not violate in any manner any patent, copyright, trade secret or other proprietary right of the Authority or third persons in connection with their services hereunder, either before or after termination or expiration of this Contract. The Vendor and the personnel provided by the Vendor hereunder shall not willfully or otherwise perform any dishonest or fraudulent acts, breach any security procedures, or damage or destroy any hardware, software or documentation, proprietary or otherwise, in connection with their services hereunder. The Vendor shall promptly and fully inform the Director in writing of any patent, copyright, trade secret or other intellectual property rights or disputes, whether existing or potential, of which the Vendor has knowledge, relating to any idea, design, method, material, equipment or other matter related to this Contract or coming to the Vendor’s attention in connection with this Contract.

d. The 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 to the fact that goods have been, are being or will be provided to it and/or that services have been, are being or will be 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.

54. ENTIRE AGREEMENT

The Agreement between the Port Authority and the Vendor consists of this document, the Request For Quotation (“RFQ”), the Request for Proposals (“RFP”), Bid documents, the Specifications, any Appendices, and all other documents required to be submitted by the Vendor with its proposal, and the Authority's acceptance of the Vendor's proposal and constitutes the
complete and exclusive statement of the terms of the agreement between the parties, and the agreement may not be explained or supplemented by course of dealing, usage of trade, or course of performance; and this document shall supersede all other communications, written or oral.

55. CHANGES IN AGREEMENT

Except as specifically provided in the clause hereof entitled "Rights of the Port Authority," no change in or termination or modification of this agreement shall be effective unless in writing and signed by the party to be charged therewith.

56. APPLICABLE LAW

This agreement shall be construed in accordance with the laws of the state of New York. The Vendor hereby consents to the exercise by the courts of the states of New York and New Jersey of in personam jurisdiction over it with respect to any matter arising out of or in connection with this agreement and waives any objection to such jurisdiction which it might otherwise have; and the Vendor agrees that mailing of process addressed to it, at the address of the Vendor indicated herein by certified mail, shall have the same effect as personal service within the state of New York upon a domestic corporation of the state of New York.

57. NO PERSONAL LIABILITY

Neither the Commissioners of the Port Authority, nor Directors of PATH, nor any of them, nor any officer, agent or employee thereof, shall be charged personally by the Vendor with any liability, or held personally liable to the Vendor 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.

58. 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 Bidder shall submit, with its Bid, the following:

(i) Certified financial statements, including applicable notes, reflecting the Bidder's assets, liabilities, net worth, revenues, expenses, profit or loss and cash flow for the most recent calendar year or the Bidder's most recent fiscal year.

(ii) Where the certified financial statements set forth in (i) above are not available, then either reviewed or compiled statements from an independent accountant setting forth the aforementioned information shall be provided.

(iii) Where neither certified financial statements nor financial statements from an independent accountant are available, as set forth in (i) and (ii) above, then financial statements containing such information prepared directly by the Bidder may be submitted; such financial statements, however, must be 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.

Where the statements submitted pursuant to subparagraphs (i), (ii) or (iii) are dated prior to forty-five (45) days before the Bid opening, then the Bidder shall submit 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.

1. 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.

2. 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.
PART II- CONTRACTOR'S INTEGRITY PROVISIONS

1. CERTIFICATION OF NO INVESTIGATION (CRIMINAL OR CIVIL ANTI-TRUST), INDICTMENT, CONVICTION, DEBARMENT, SUSPENSION, DISQUALIFICATION AND DISCLOSURE OF OTHER INFORMATION

By bidding on this Contract, each Bidder and each person signing on behalf of any Bidder certifies, and in the case of a joint bid each party thereto certifies as to its own organization, that the Bidder and each parent and/or affiliate of the Bidder has not

a. been indicted or convicted in any jurisdiction;
b. been suspended, debarred, found not responsible or otherwise disqualified from entering into any contract with any governmental agency or been denied a government contract for failure to meet standards related to the integrity of the Bidder;
c. had a contract terminated by any governmental agency for breach of contract or for any cause based in whole or in part on an indictment or conviction;
d. ever used a name, trade name or abbreviated name, or an Employer Identification Number different from those inserted in the Bid;
e. had any business or professional license suspended or revoked or, within the five years prior to bid opening, had any sanction imposed in excess of fifty thousand dollars ($50,000) as a result of any judicial or administrative proceeding with respect to any license held or with respect to any violation of a federal, state or local environmental law, rule or regulation;
f. had any sanction imposed as a result of a judicial or administrative proceeding related to fraud, extortion, bribery, bid rigging, embezzlement, misrepresentation or anti-trust regardless of the dollar amount of the sanctions or the date of their imposition; and
g. been, and is not currently, the subject of a criminal investigation by any federal, state or local prosecuting or investigative agency and/or a civil anti-trust investigation by any federal, state or local prosecuting or investigative agency, including an inspector general of a governmental agency or public authority.

2. NON-COLLUSIVE BIDDING, AND CODE OF ETHICS CERTIFICATION, CERTIFICATION OF NO SOLICITATION BASED ON COMMISSION, PERCENTAGE, BROKERAGE, CONTINGENT OR OTHER FEES

By bidding on this Contract, each Bidder and each person signing on behalf of any Bidder certifies, and in the case of a joint bid, each party thereto certifies as to its own organization, that

a. the prices in its bid have been arrived at independently without collusion, consultation, communication or agreement for the purpose of restricting competition, as to any matter relating to such prices with any other bidder or with any competitor;
b. the prices quoted in its bid have not been and will not be knowingly disclosed directly or indirectly by the Bidder prior to the official opening of such bid to any other bidder or to any competitor;
c. no attempt has been made and none will be made by the Bidder to induce any other
person, partnership or corporation to submit or not to submit a bid for the purpose of restricting competition;

d. this organization has not made any offers or agreements or taken any other action with respect to any Authority employee or former employee or immediate family member of either which would constitute a breach of ethical standards under the Code of Ethics dated March 11, 2014, or as may be revised, (a copy of which is available upon request) nor does this organization have any knowledge of any act on the part of an Authority employee or former Authority employee relating either directly or indirectly to this organization which constitutes a breach of the ethical standards set forth in said Code;

e. no person or selling agency other than a bona fide employee or bona fide established commercial or selling agency maintained by the Bidder for the purpose of securing business, has been employed or retained by the Bidder to solicit or secure this Contract on the understanding that a commission, percentage, brokerage, contingent, or other fee would be paid to such person or selling agency; and

f. the Bidder has not offered, promised or given, demanded or accepted, any undue advantage, directly or indirectly, to or from a public official or employee, political candidate, party or party official, or any private sector employee (including a person who directs or works for a private sector enterprise in any capacity), in order to obtain, retain, or direct business or to secure any other improper advantage in connection with this Contract.

g. no person or organization has been retained, employed or designated on behalf of the Bidder to impact any Port Authority determination with respect to (i) the solicitation, evaluation or award of this Contract, or (ii) the preparation of specifications or request for submissions in connection with this Contract.

The foregoing certifications in this Part III, Sections 1 and 2, shall be deemed to have been made by the Bidder as follows:

* if the Bidder is a corporation, such certification shall be deemed to have been made not only with respect to the Bidder itself, but also with respect to each parent, affiliate, director, and officer of the Bidder, as well as, to the best of the certifier's knowledge and belief, each stockholder of the Bidder with an ownership interest in excess of 10%;

* if the Bidder is a partnership, such certification shall be deemed to have been made not only with respect to the Bidder itself, but also with respect to each partner.

Moreover, the foregoing certifications, if made by a corporate Bidder, shall be deemed to have been authorized by the Board of Directors of the Bidder, and such authorization shall be deemed to include the signing and submission of the bid and the inclusion therein of such certification as the act and deed of the corporation.

In any case where the Bidder cannot make the foregoing certifications, the Bidder shall so state and shall furnish with the signed bid a signed statement which sets forth in detail the reasons therefor. If the Bidder is uncertain as to whether it can make the foregoing certifications, it shall so indicate in a signed statement furnished with its bid, setting forth in such statement the reasons for its uncertainty. With respect to the foregoing certification in paragraph “2g”, if the Bidder
cannot make the certification, it shall provide, in writing, with the signed bid: (i) a list of the name(s), address(es), telephone number(s), and place(s) of principal employment of each such individual or organization; and (ii) a statement as to whether such individual or organization has a “financial interest” in this Contract, as described in the Procurement Disclosure Policy of the Authority (a copy of which is available upon request to the Chief Procurement Officer of the Procurement Department of the Authority). Such disclosure is to be updated, as necessary, up to the time of award of this Contract. As a result of such disclosure, the Port Authority shall take appropriate action up to and including a finding of non-responsibility.

Failure to make the required disclosures shall lead to administrative actions up to and including a finding of non-responsiveness or non-responsibility.

Notwithstanding that the Bidder may be able to make the foregoing certifications at the time the bid is submitted, the Bidder shall immediately notify the Authority in writing during the period of irrevocability of bids and the term of the Contract, if Bidder is awarded the Contract, of any change of circumstances which might under this clause make it unable to make the foregoing certifications, might render any portion of the certifications previously made invalid, or require disclosure. The foregoing certifications or signed statement shall be deemed to have been made by the Bidder with full knowledge that they would become a part of the records of the Authority and that the Authority will rely on their truth and accuracy in awarding and continuing this Contract. In the event that the Authority should determine at any time prior or subsequent to the award of this Contract that the Bidder has falsely certified as to any material item in the foregoing certifications, has failed to immediately notify the Port Authority of any change in circumstances which might make it unable to make the foregoing certifications, might render any portion of the certifications previously made invalid, or require disclosure, or has willfully or fraudulently furnished a signed statement which is false in any material respect, or has not fully and accurately represented any circumstance with respect to any item in the foregoing certifications required to be disclosed, the Authority may determine that the Bidder is not a responsible Bidder with respect to its bid on the Contract or with respect to future bids on Authority contracts and may exercise such other remedies as are provided to it by the Contract with respect to these matters. In addition, Bidders are advised that knowingly providing a false certification or statement pursuant hereto 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.). Bidders are also advised that the inability to make such certification will not in and of itself disqualify a Bidder, and that in each instance the Authority will evaluate the reasons therefor provided by the Bidder. Under certain circumstances the Bidder may be required as a condition of Contract award to enter into a Monitoring Agreement under which it will be required to take certain specified actions, including compensating an independent Monitor to be selected by the Port Authority, said Monitor to be charged with, among other things, auditing the actions of the Bidder to determine whether its business practices and relationships indicate a level of integrity sufficient to permit it to continue business with the Port Authority.

3. BIDDER ELIGIBILITY FOR AWARD OF CONTRACTS - DETERMINATION BY AN AGENCY OF THE STATE OF NEW YORK OR NEW JERSEY CONCERNING ELIGIBILITY TO RECEIVE PUBLIC CONTRACTS

Bidders are advised that the Authority has adopted a policy to the effect that in awarding its
contracts it will honor any 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 rate of wage legislation.

The policy permits a Bidder whose ineligibility has been so determined by an agency of the State of New York or New Jersey to submit a bid on a Port Authority contract and then to establish that it is eligible to be awarded a contract on which it has bid because (i) the state agency determination relied upon does not apply to the Bidder, or (ii) the state agency determination relied upon was made without affording the Bidder the notice and hearing to which the Bidder was entitled by the requirements of due process of law, or (iii) the state agency determination was clearly erroneous or (iv) the state determination relied upon was not based on a finding of conduct demonstrating a lack of integrity or violation of a prevailing rate of wage law.

The full text of the resolution adopting the policy may be found in the Minutes of the Authority's Board of Commissioners meeting of September 9, 1993.

4. CONTRACTOR RESPONSIBILITY, SUSPENSION OF WORK AND TERMINATION

During the term of this Contract, the Contractor shall at all times during the Contract term remain responsible. The Contractor agrees, if requested by the Port Authority to present evidence of its continuing legal authority to do business in the States of New Jersey or New York, integrity, experience, ability, prior performance, and organizational and financial capacity.

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

Upon written notice to the Contractor, and an opportunity to be heard with appropriate Port Authority officials or staff, the Contract may be terminated by Port Authority at the Contractor’s expense where the Contractor is determined by the Port Authority to be non-responsible. In such event, the Port Authority or its designee may complete the contractual requirements in any manner he or she may deem advisable and pursue available legal or equitable remedies for breach, including recovery of costs from Contractor associated with such termination.

5. NO GIFTS, GRATUITIES, OFFERS OF EMPLOYMENT, ETC.

At all times, the Contractor shall not offer, give or agree to give anything of value either to a Port Authority employee, agent, job shopper, consultant, construction manager or other person or firm representing the Port Authority, or to a member of the immediate family (i.e., a spouse, child, parent, brother or sister) of any of the foregoing, in connection with the performance by such employee, agent, job shopper, consultant, construction manager or other person or firm representing the Port Authority of duties involving transactions with the Contractor on behalf of
the Port Authority, whether or not such duties are related to this Contract or any other Port Authority contract or matter. Any such conduct shall be deemed a material breach of this Contract.

As used herein "anything of value" shall include but not be limited to any (a) favors, such as meals, entertainment, transportation (other than that contemplated by the Contract or any other Port Authority contract), etc. which might tend to obligate the Port Authority employee to the Contractor, and (b) gift, gratuity, money, goods, equipment, services, lodging, discounts not available to the general public, offers or promises of employment, loans or the cancellation thereof, preferential treatment or business opportunity. Such term shall not include compensation contemplated by this Contract or any other Port Authority contract. Where used herein, the term "Port Authority" shall be deemed to include all subsidiaries of the Port Authority.

The Contractor shall insure that no gratuities of any kind or nature whatsoever shall be solicited or accepted by it and by its personnel for any reason whatsoever from the passengers, tenants, customers or other persons using the Facility and shall so instruct its personnel.

In the event that the Contractor becomes aware of the occurrence of any conduct that is prohibited by this section entitled “No Gifts, Gratuities, Offers of Employment, Etc.”, it shall report such occurrence to the Port Authority’s Office of Inspector General within three (3) business days of obtaining such knowledge. (See “http://www.panynj.gov/inspector-general” for information about to report information to the Office of Inspector General). Failing to report such conduct shall be grounds for a finding of non-responsibility.

In addition, during the term of this Contract, the Contractor shall not make an offer of employment or use confidential information in a manner proscribed by the Code of Ethics and Financial Disclosure dated March 11, 2014, or as may be revised (a copy of which is available upon request to the Office of the Secretary of the Port Authority). The Contractor shall include the provisions of this clause in each subcontract entered into under this Contract.

6. CONFLICT OF INTEREST

During the term of this Contract, the Contractor shall not participate in any way in the preparation, negotiation or award of any contract (other than a contract for its own services to the Authority) to which it is contemplated the Port Authority may become a party, or participate in any way in the review or resolution of a claim in connection with such a contract if the Contractor has a substantial financial interest in the contractor or potential contractor of the Port Authority or if the Contractor has an arrangement for future employment or for any other business relationship with said contractor or potential contractor, nor shall the Contractor at any time take any other action which might be viewed as or give the appearance of conflict of interest on its part. If the possibility of such an arrangement for future employment or for another business arrangement has been or is the subject of a previous or current discussion, or if the Contractor has reason to believe such an arrangement may be the subject of future discussion, or if the Contractor has any financial interest, substantial or not, in a contractor or potential contractor of the Authority, and the Contractor's participation in the preparation, negotiation or award of any contract with such a contractor or the review or resolution of a claim in connection with such a contract is contemplated or if the Contractor has reason to believe that any other situation exists which might be viewed as or give
the appearance of a conflict of interest, the Contractor shall immediately inform the Chief Procurement Officer in writing of such situation giving the full details thereof. Unless the Contractor receives the specific written approval of the Chief Procurement Officer, the Contractor shall not take the contemplated action which might be viewed as or give the appearance of a conflict of interest. The Chief Procurement Officer may require the Contractor to submit a mitigation plan addressing and mitigating any disclosed or undisclosed conflict, which is subject to the approval of the Chief Procurement Officer and shall become a requirement, as though fully set forth in this Contract. In the event the Chief Procurement Officer shall determine that the performance by the Contractor of a portion of its Services under this Agreement is precluded by the provisions of this numbered paragraph, or a portion of the Contractor's said Services is determined by the Chief Procurement Officer to be no longer appropriate because of such preclusion, then the Chief Procurement Officer shall have full authority on behalf of both parties to order that such portion of the Contractor's Services not be performed by the Contractor, reserving the right, however, to have the Services performed by others and any lump sum compensation payable hereunder which is applicable to the deleted work shall be equitably adjusted by the parties. The Contractor's execution of this document shall constitute a representation by the Contractor that at the time of such execution the Contractor knows of no circumstances, present or anticipated, which come within the provisions of this paragraph or which might otherwise be viewed as or give the appearance of a conflict of interest on the Contractor's part. The Contractor acknowledges that the Authority may preclude it from involvement in certain disposition/privatization initiatives or transactions that result from the findings of its evaluations hereunder or from participation in any contract, which results, directly or indirectly, from the Services provided by the Contractor hereunder. The Port Authority’s determination regarding any questions of conflict of interest shall be final.

7. DEFINITIONS

As used in this section, the following terms shall mean:

Affiliate - Two or more firms are affiliates if a parent owns more than fifty percent of the voting stock of each of the firms, or a common shareholder or group of shareholders owns more than fifty percent of the voting stock of each of the firms, or if the firms have a common proprietor or general partner.

Agency or Governmental Agency - Any federal, state, city or other local agency, including departments, offices, public authorities and corporations, boards of education and higher education, public development corporations, local development corporations and others.

Investigation - Any inquiries made by any federal, state or local criminal prosecuting and/or law enforcement agency and any inquiries concerning civil anti-trust investigations made by any federal, state or local governmental agency. Except for inquiries concerning civil anti-trust investigations, the term does not include inquiries made by any civil government agency concerning compliance with any regulation, the nature of which does not carry criminal penalties, nor does it include any background investigations for employment, or Federal, State, and local inquiries into tax returns.

Officer - Any individual who serves as chief executive officer, chief financial officer, or chief operating officer of the Bidder by whatever titles known.

Parent - An individual, partnership, joint venture or corporation which owns more than 50% of the voting stock of the Bidder.
If the solicitation is a Request for Proposal:

  **Bid** - shall mean Proposal;
  **Bidder** - shall mean Proposer;
  **Bidding** - shall mean submitting a Proposal.

In a Contract resulting from the taking of bids:

  **Bid** - shall mean bid;
  **Bidder** - shall mean Bidder; except and until the Contract has been awarded, then it shall mean Contractor
  **Bidding** - shall mean executing this Contract.

In a Contract resulting from the taking of Proposals:

  **Bid** - shall mean Proposal;
  **Bidder** - shall mean Proposer;
  **Bidding** - shall mean executing this Contract.
BUY AMERICA CERTIFICATION (ROLLING STOCK)

A bidder or offeror must submit to the FTA recipient the Buy America certification (below) with all bids or offers on FTA-funded contracts, except those subject to a general waiver. Bids or offers that are not accompanied by a completed Buy America certification must be rejected as nonresponsive. This requirement does not apply to lower tier subcontractors.

CERTIFICATION REQUIREMENT FOR PROCUREMENT OF BUSES, OTHER ROLLING STOCK AND ASSOCIATED EQUIPMENT (ROLLING STOCK)


The bidder or offeror hereby certifies that it will comply with the requirements of 49 U.S.C. 5323(j)(2)(C) and the regulations at 49 C.F.R. Part 661.11.

Date _________________________________________________________________

Signature __________________________________________________________

Company Name __________________________________________________________

Title _________________________________________________________________

Certificate of Non-Compliance with 49 U.S.C. 5323(j)(2)(C)

The bidder or offeror hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323(j)(2)(C) and 49 C.F.R. 661.11, but may qualify for an exception pursuant to 49 U.S.C. 5323(j)(2)(A), 5323(j)(2)(B), or 5323(j)(2)(D), and 49 C.F.R. 661.7.

Date _________________________________________________________________

Signature __________________________________________________________

Company Name ________________________________________________________

Title _______________________________________________________________
Contents

DEFINITIONS

1. INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION TERMS
2. FEDERAL CHANGES
3. NO FEDERAL GOVERNMENT OBLIGATIONS TO THIRD PARTIES
4. ORGANIZATIONAL CONFLICT OF INTEREST
5. LOBBYING RESTRICTIONS
6. CIVIL RIGHTS REQUIREMENT
7. CARGO PREFERENCE - USE OF UNITED STATES FLAG VESSELS
8. DAVIS-BACON AND COPELAND ANTI-KICKBACK ACTS
9. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT
10. VETERANS EMPLOYMENT
11. SEISMIC SAFETY
12. ENERGY CONSERVATION
13. CLEAN WATER REQUIREMENTS
14. CLEAN AIR REQUIREMENTS
15. FLY AMERICA
<table>
<thead>
<tr>
<th></th>
<th>Section Description</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>16.</td>
<td>CONTRACTS INVOLVING FEDERAL PRIVACY ACT REQUIREMENTS</td>
<td>16</td>
</tr>
<tr>
<td>17.</td>
<td>PREFERENCE FOR RECYCLED PRODUCTS</td>
<td>17</td>
</tr>
<tr>
<td>18.</td>
<td>PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS</td>
<td>17</td>
</tr>
<tr>
<td>19.</td>
<td>TRANSIT EMPLOYEE PROTECTIVE REQUIREMENTS</td>
<td>18</td>
</tr>
<tr>
<td>20.</td>
<td>ADA ACCESS REQUIREMENTS</td>
<td>19</td>
</tr>
<tr>
<td>21.</td>
<td>BUY AMERICA</td>
<td>20</td>
</tr>
<tr>
<td>22.</td>
<td>AUTHORITY OF CHIEF ENGINEER - BREACHES AND DISPUTE RESOLUTION</td>
<td>20</td>
</tr>
<tr>
<td>23.</td>
<td>NON-CONSTRUCTION EMPLOYEE PROTECTION CLAUSE</td>
<td>22</td>
</tr>
<tr>
<td>24.</td>
<td>CERTIFICATION - DEBARMENT AND SUSPENSION</td>
<td>22</td>
</tr>
<tr>
<td>25.</td>
<td>ACCESS TO RECORDS AND REPORTS</td>
<td>23</td>
</tr>
<tr>
<td>27.</td>
<td>STANDARD FORM LLL - DISCLOSURE OF LOBBYING ACTIVITIES</td>
<td>27</td>
</tr>
<tr>
<td>28.</td>
<td>INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES</td>
<td>28</td>
</tr>
<tr>
<td>29.</td>
<td>CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION - LOWER TIER COVERED TRANSACTIONS</td>
<td>29</td>
</tr>
</tbody>
</table>
DEFINITIONS

The following words have the following meanings for purposes of the below-numbered clauses of these Federal Transit Administration Contract Administration Provisions only:

“Agreement” means “Contract”. This Agreement is anticipated to be funded in whole or in part by the United States Department of Transportation’s Federal Transit Administration (FTA).

“Construction” means Construction, alteration, or repair (including dredging, excavating, and painting) of buildings, structures, or other real property. For purposes of this definition, the terms “buildings, structures, or other real property” include, but are not limited to, improvements of all types, such as bridges, dams, plants, highways, parkways, streets, subways, tunnels, sewers, mains, power lines, cemeteries, pumping stations, railways, airport facilities, terminals, docks, piers, wharves, ways, lighthouses, buoys, jetties, breakwaters, levees, canals, and channels. Construction does not include the manufacture, production, furnishing, Construction, alteration, repair, processing, or assembling of vessels, aircraft, or other kinds of personal property.

“Contractor” and “Subcontractor” means the same as “Consultant” and “Subconsultant,” respectively.

“Micro-Purchase” means a purchase of $3,500 or less and is exempt from FTA’s Buy America requirements but is subject to Davis-Bacon prevailing wage requirements such that even though the Port Authority uses micro-purchase procurement procedures, prevailing wage requirements apply to Construction contracts exceeding $2,000.

“PATH” means the Port Authority Trans-Hudson Corporation.

“Port Authority of New York and New Jersey” means the Port Authority of New York and New Jersey and its subsidiaries, including PATH.

“Recipient” means a Recipient of Federal assistance awarded by the Federal Transit Administration (FTA) when using that Federal assistance to finance its procurements (third party contracts).

“Simplified Acquisition Threshold” or “SAT” means $150,000 for grants dated on or after December 26, 2014; and $100,000 for grants dated before December 26, 2014.
1. **INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION TERMS**

   This section applies to all contracts except Micro-Purchases.

   The following provisions include, in part, certain Standard Terms and Conditions required by the United States Department of Transportation (DOT), whether or not expressly set forth in the following contract provisions. All contractual provisions required by DOT, as set forth in the FTA Circular 4220.1F are hereby incorporated by reference. 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.

   The Contractor shall include the above clause in every subcontract financed in whole or in part with Federal assistance provided by the FTA and shall ensure that such provisions will be binding upon each subcontractor of any tier.

   Each and every provision required by the FTA to be inserted in this Contract shall be deemed to be inserted 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 Contract shall remain in full force and effect.

2. **FEDERAL CHANGES**

   This section applies to all contracts except Micro-Purchases.

   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 in the Master Agreement between the Authority and the FTA, 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 shall apply to this Contract at any particular time, unless the FTA issues a written determination otherwise. All standards or limits within this document are minimum requirements, unless modified by the FTA or any subagency thereof. The requirements of this section shall apply to each applicable changed requirement.

   The Contractor shall include the above clause in every subcontract financed in whole or in part with Federal assistance provided by the FTA and shall ensure that such provisions will be binding upon each subcontractor of any tier.
3. **NO FEDERAL GOVERNMENT OBLIGATIONS TO THIRD PARTIES**

   This section applies to all contracts except Micro-Purchases.

   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**

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

   1.) The Contractor may 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.

   2.) 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.
The Contractor, by submitting its bid or proposal, agrees and shall cause its subcontractors to agree, 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.

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 another 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.

5. LOBBYING RESTRICTIONS

This section applies to all contracts of $100,000 or more.


6. CIVIL RIGHTS REQUIREMENT

This section applies to all contracts except Micro-Purchases.

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, religion, sex, sexual
orientation, gender identity, or national origin. In addition, the Contractor agrees to comply with applicable federal implementing regulations and other implementing requirements FTA may issue.

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

1.) **Race, Color, Religion, Sex, Sexual Orientation, Gender Identity, or National Origin** - 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, religion, sex, sexual orientation, gender identity, or national origin. 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.

The Contractor shall be responsible for ensuring that lower tier contractors and subcontractors and subagreements are in compliance with these requirements.
7. CARGO PREFERENCE - USE OF UNITED STATES FLAG VESSELS

This section applies to contracts involving equipment, materials or commodities, which may be transported by ocean vessels. These requirements do not apply to Micro-Purchases, except for Construction contracts over $2,000).

The Contractor 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 working 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 (a), above to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to the Port Authority (through the contractor in the case of a subcontractor’s bill-of-lading).

(c) The Contractor agrees 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.

8. DAVIS-BACON AND COPELAND ANTI-KICKBACK ACTS

This section applies to Construction contracts and subcontracts. For purposes of this section, construction includes actual construction, alteration and/or repair, including decoration or painting, exceeding $2,000.

The Davis-Bacon and Copeland Acts are codified at 40 USC 3141, et seq. and 18 USC 874. The Acts apply to grantee Construction contracts and subcontracts that “at least partly are financed by a loan or grant from the Federal Government.” 40 USC 3145(a), 29 CFR 5.2(h), 49 CFR 18.36(i)(5). The Acts apply to any Construction contract over $2,000. 40 USC 3142(a), 29 CFR 5.5(a),‘Construction,’ for purposes of the Acts, includes “actual Construction, alteration and/or repair, including painting and decorating.” 29 CFR 5.5(a). The requirements of both Acts are incorporated into a single clause (see 29 CFR 3.11) enumerated at 29 CFR 5.5(a) and reproduced below and are applicable if this Contract is a Construction contract (as
(1) **Minimum wages.** (i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), shall be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (a)(1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in §5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph (a)(1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(ii)(A) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a
reasonable relationship to the wage rates contained in the wage determination.

(A) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(B) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(2) Withholding. The Port Authority shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor,
or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, the Port Authority may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) Payrolls and basic records. (i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)(A) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the Port Authority. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals.

Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at http://www.dol.gov/esa/whd/forms/wh347instr.htm or its successor site. The prime contractor
(B) Each payroll submitted shall be accompanied by a “Statement of Compliance,” signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

1. That the payroll for the payroll period contains the information required to be provided under §5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under §5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

2. That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

3. That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the “Statement of Compliance” required by paragraph (a)(3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the FTA or the Department of Labor, and shall permit such representatives to interview
employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(4) Apprentices and trainees—(i) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal
certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee’s level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

(5) Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

(6) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the FTA may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

(7) Contract termination: debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

(8) Compliance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.
(9) **Disputes concerning labor standards.** Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the Port Authority, the U.S. Department of Labor, or the employees or their representatives.

(10) **Certification of eligibility.** (i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).


9. **CONTRACT WORK HOURS AND SAFETY STANDARDS ACT**

This section applies to grantee contracts and subcontracts under 40 USC 3701(b)(1)(B)(iii) and (b)(2), 29 CFR 5.2(h), 49 CFR 18.36(i)(6) for contracts for construction, and non-construction projects that employ “laborers or mechanics on a public work, where the contract amount is greater than $100,000.

A. **Overtime Requirements**

No Contractor or subcontractor contracting for any part of the Contract Work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such Work to Work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

B. **Violation; liability for unpaid wages; liquidated damages**

In the event of any violation of the clause set forth in Paragraph A of this Section the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in Paragraph A of this Section, in the sum of $10 for each calendar day.
on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in Paragraph A of this Section.

C. Withholding for unpaid wages and liquidated damages

The Authority shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of Work performed by the Contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime Contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph B of this Section.

D. Subcontracts

The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in Paragraphs A through D of this Section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs A through D of this Section. The FTA does not require the inclusion of these requirements in subcontracts.

10. VETERANS EMPLOYMENT

Contractors working on a capital project funded using FTA assistance agree 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.

11. SEISMIC SAFETY

Applies only to the Construction of new buildings or additions to existing buildings. These requirements do not apply to Micro-Purchases.

The Contractor agrees that any new building or addition to an existing building will be constructed in accordance with standards for Seismic Safety required in Department of Transportation Seismic Safety Regulations 49 CFR Part 41 and will certify compliance to the extent required by the regulation. The Contractor also agrees to ensure that all Work performed under this Contract
including Work performed by a subcontractor is in compliance with the standards required by the Seismic Safety Regulations and the certification of compliance. The certificate should be provided to the Engineer. The completed certification of compliance is to be submitted to the Engineer. The seismic safety standards applicable to this Contract are contained in Section 2312 ICBO Uniform Building Code (UBC), as modified by the Appendix to Title 27, Chapter 1 (Volume 7), of the Administrative Code and Charter of the City of New York at RS 9-6 Earthquake Loads.

12. ENERGY CONSERVATION

This section applies to all contracts except Micro-Purchases.

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 to7815 of Title 9, Subtitle BB of the New York Codes, Rules and Regulations. The Contractor shall be responsible for ensuring that lower tier contractors and subcontractors and subagreements are in compliance with these requirements.

13. CLEAN WATER REQUIREMENTS

This section applies to each contract and subcontract which exceeds the SAT.

The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended. For contracts and subgrants in excess of the SAT, the Contractor agrees to comply with all applicable standards, orders and regulations issued pursuant the Federal Water 33 USC §1251-1387. The Contractor agrees to report each violation to the Authority and understands and agrees that the Authority will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

The Contractor shall include the above clause in every subcontract exceeding the SAT financed in whole or in part with Federal assistance provided by the FTA and shall ensure that such provisions will be binding upon each subcontractor of any tier.
14. CLEAN AIR REQUIREMENTS

This section applies to all contracts over the SAT, including indefinite quantities where the amount is expected to exceed the SAT in any year.

The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, (42 U.S.C. 7401-7671q). The Contractor agrees to report each violation to the Authority and understands and agrees that the Authority will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

The Contractor shall include the above clause in every subcontract exceeding the SAT financed in whole or in part with Federal assistance provided by the FTA and shall ensure that such provisions will be binding upon each subcontractor of any tier.

15. FLY AMERICA

This section applies to certain contracts involving international transportation of persons or property, by air when the FTA will participate in the costs of such air transportation. These requirements do not apply to Micro-purchases.

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 Recipients and sub recipients 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. The Contractor shall include the requirements of this section in all first tier subcontracts that may involve international air transportation and shall be responsible for ensuring that lower tier contractors and subcontractors are in compliance with these requirements.

16. CONTRACTS INVOLVING FEDERAL PRIVACY ACT REQUIREMENTS

This section applies to all contracts except Micro-purchases when a grantee maintains files on drug and alcohol enforcement activities for FTA, and those files are organized so that information could be retrieved by personal identifier.
The following requirements apply to the Contractor and his employees that administer any system of records on behalf of the Federal Government under any contract:

i. The Contractor agrees to comply with, and assures the compliance of his employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. § 552a. Among other things, the Contractor agrees to obtain the express consent of the Federal Government before the Contractor or its employees operate a system of records on behalf of the Federal Government. The Contractor understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract.

ii. The Contractor also agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by FTA.

17. PREFERENCE FOR RECYCLED PRODUCTS

This section applies to all contracts over $10,000 for items designated by the EPA. The Contractor agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery 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; and 2 CFR 200.322, Procurement of Recovered Materials. 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. The Contractor shall be responsible for ensuring that lower tier contractors and subcontractors are in compliance with these requirements.

18. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS

This section applies to all contracts except Micro-Purchases.

(1) 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 USDOT 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, 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.

(2) 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 49 U.S.C. § 5323(l), 18 U.S.C. § 1001, or other applicable federal law to the extent the Federal Government deems appropriate.

(3) The Contractor agrees to include the above two paragraphs in each subcontract related to this Contract. It is further agreed that paragraphs (1) and (2), above, shall not be modified, except to identify the subcontractor who will be subject to the provisions.

19. TRANSIT EMPLOYEE PROTECTIVE REQUIREMENTS

This section applies to each contract for transit operations performed by employees of a Contractor recognized by FTA to be a transit operator, except for Micro-Purchases.

The Contractor agrees to comply with applicable transit employee protective requirements as follows:

• General Transit Employee Protective Requirements - To the extent that FTA determines that transit operations are involved, the Contractor agrees to carry out the transit operations work on the underlying contract in compliance with terms and conditions determined by the U.S. Secretary of Labor to be fair and equitable to protect the interests of employees employed under this Contract and to meet the employee protective requirements of 49 U.S.C. A 5333(b), and U.S. DOL guidelines at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in the letter of certification from the U.S. DOL to FTA applicable to the FTA Recipient's project from which Federal assistance is provided to support work on the underlying contract. The Contractor agrees to carry out that work in compliance with the conditions stated in that U.S. DOL letter. The requirements of this subsection (1.), however, do not apply to any contract financed with Federal assistance provided by FTA either for projects for elderly individuals and individuals with disabilities authorized by 49 U.S.C. § 5310(a)(2), or for projects for non-urbanized areas authorized by 49 U.S.C. § 5311. Alternate provisions for those projects are set forth in subsections (b) and (c) of this clause.
Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C.§ 5310(a)(2) for Elderly Individuals and Individuals with Disabilities: If the contract involves transit operations financed in whole or in part with federal assistance authorized by 49 U.S.C. § 5310(a)(2), and if the U.S. Secretary of Transportation has determined or determines in the future that the employee protective requirements of 49 U.S.C. § 5333(b) are necessary or appropriate for the state and the public body subrecipient for which work is performed on the underlying contract, the Contractor agrees to carry out the Project in compliance with the terms and conditions determined by the U.S. Secretary of Labor to meet the requirements of 49 U.S.C. § 5333(b), U.S. DOL guidelines at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in the U.S. DOL’s letter of certification to FTA, the date of which is set forth in the Grant Agreement or Cooperative Agreement with the Recipient. The Contractor agrees to perform transit operations in connection with the underlying contract in compliance with the conditions stated in that U.S. DOL letter.

Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C.§ 5311 in Nonurbanized Areas - If the contract involves transit operations financed in whole or in part with Federal assistance authorized by 49 U.S.C. § 5311, the Contractor agrees to comply with the terms and conditions of the Special Warranty for the Nonurbanized Area Program agreed to by the U.S. Secretaries of Transportation and Labor, dated May 31, 1979, the procedures implemented by U.S. DOL or any revision thereto.

The Contractor shall include the above clause in every subcontract financed in whole or in part with Federal assistance provided by the FTA and shall ensure that such provisions will be binding upon each subcontractor of any tier.

20. ADA ACCESS REQUIREMENTS

21. BUY AMERICA

This section applies to Construction Contracts and Acquisition of Goods or Rolling Stock (valued at more than the SAT).

The Contractor agrees to comply with 49 U.S.C. 5323(j) and 49 C.F.R. Part 661, which provides that federal funds may not be obligated unless steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 C.F.R. 661.7, and include final assembly in the United States for 15 passenger vans and 15 passenger wagons produced by Chrysler Corporation, and microcomputer equipment and software. Separate requirements for rolling stock are set out at 49 U.S.C. 5323(j)(2)(C) and 49 C.F.R. 661.11. Final assembly of rolling stock must occur in the United States and rolling stock must contain the required domestic content, as set forth in the 49 USC Section 5323(j)(C)(2), as amended by Section 3011 of the Fixing America’s Surface Transportation (FAST) Act. The Contractor shall be responsible for ensuring that lower tier contractors and subcontractors are in compliance with these requirements. Subcontracts in any amount are subject to Buy America.

A bidder or offeror must submit to the Port Authority the appropriate Buy America Certification with all bids or offers on FTA-funded contracts, except those subject to a general waiver. Bids or offers that are not accompanied by a completed Buy America Certification must be rejected as non-responsive. This certification requirement does not apply to lower-tier subcontractors.

22. AUTHORITY OF CHIEF ENGINEER - BREACHES AND DISPUTE RESOLUTION

Inasmuch as the public interest requires that the project to which this Contract relates shall be performed in the manner which the Port Authority, acting through the Chief Engineer (or his/her designee), deems best, the Chief Engineer (or his/her designee) shall have absolute authority to determine what is or is not necessary or proper for or incidental to the portion thereof specified in the clause(s) hereof setting out the Work and any Scope of Work, Contract Drawings and/or Specifications, as applicable shall be deemed merely his/her present determination on this point. In the exercise of this authority, he/she shall have power to alter the Scope of Work, Contract Drawings and/or Specifications as may be applicable; to require the performance of Work not required by them in their present form, even though of a totally different character from that now required; and to vary, increase and diminish the character, quantity and quality of, or to countermand, any Work now or hereafter required. Such variation, increase, diminution or countermanding need not be based on necessity but may be based on convenience.
If at any time it shall be, from the viewpoint of the Port Authority, impracticable or undesirable in the judgment of the Chief Engineer (or his/her designee) to proceed with or continue the performance of the Contract or any part thereof, whether or not for reasons beyond the control of the Port Authority, he/she shall have authority to suspend performance of any part or all of the Contract until such time as he may deem it practicable or desirable to proceed. Moreover, if any time it shall be, from the viewpoint of the Port Authority impracticable or undesirable in the judgment of the Chief Engineer (or his/her designee) to proceed with or continue the performance of the Contract or any part thereof whether or not for reasons beyond the control of the Port Authority, he/she shall have authority to cancel this Contract as to any or all portions not yet performed and as to any materials not yet installed even though delivered. Such cancellation shall be without prejudice to the rights and obligations of the parties arising out of portions already performed, but no allowance shall be made for anticipated profits.

To resolve all disputes and to prevent litigation the parties to this Contract authorize the Chief Engineer (or his/her designee) to decide all questions of any nature whatsoever arising out of, under, or in connection with, or in any way related to or on account of, this Contract (including claims in the nature of breach of Contract or fraud or misrepresentation before or subsequent to acceptance of the Contractor's Bid or Proposal and claims of a type which are barred by the provisions of this Contract) and his/her decision shall be conclusive, final and binding on the parties. His/her decision may be based on such assistance as he/she may find desirable. The effect of his/her decision shall not be impaired or waived by any negotiations or settlement offers in connection with the question decided, whether or not he participated therein himself, or by any prior decision of the Authority, which prior decisions shall be deemed subject to review, or by any termination or cancellation of this Contract.

All such questions shall be submitted in writing by the Contractor to the Chief Engineer (or his/her designee) for his/her decision, together with all evidence and other pertinent information in regard to such questions, in order that a fair and impartial decision may be made. In any action against the Port Authority relating to any such question the Contractor must allege in its complaint and prove such submission, which shall be a condition precedent to any such action. No evidence or information shall be introduced or relied upon in such an action that has not been so presented to the Chief Engineer (or his/her designee).

This numbered clause shall be governed by and construed in accordance with the law of the State of New York, without giving effect to its choice of law provisions.

Performance During Dispute – Unless otherwise directed by the Port Authority, the Contractor shall continue performance under this Contract while matters in dispute are being resolved.

Rights and Remedies – The duties and obligations imposed by the Contract Documents
and the rights and remedies available thereunder shall be in addition to and not a
limitation of any duties, obligations, rights and remedies otherwise imposed or available
by law. No action or failure to act by the Authority or Contractor shall constitute a waiver
of any right or duty afforded any of them under the Contract, nor shall any such action
or failure to act constitute an approval of or acquiescence in any breach thereunder,
except as may be specifically agreed in writing. Any violation or breach of terms of this
Contract on the part of the Contractor or its subcontractors may result in the Port
Authority taking action in accordance with Section 14 of the Standard Terms and
Conditions, or such other action that may be necessary to enforce its rights.

23. NON-CONSTRUCTION EMPLOYEE PROTECTION CLAUSE

The Contractor agrees to comply with and assures compliance with any applicable
employee protection requirements for non-construction employees of the Contract Work
Hours and Safety Standards Act, as amended, 40 U.S.C. §§ 3701 et seq., in particular
with the wage and hour requirements of section 102 of that Act at 40 U.S.C. § 3702, and
Contracts Governing Federally Financed and Assisted Construction (also Labor
Standards Provisions Applicable to Nonconstruction Contracts Subject to the Contract
Work Hours and Safety Standards Act),” 29 C.F.R. Part 5.

24. CERTIFICATION - DEBARMENT AND SUSPENSION

This section applies to all contracts and subcontracts at any level expected to
equal or exceed $25,000 as well as any contract or subcontract (at any level) for
federally required auditing services.

This Contract is a covered transaction for purposes of 2 CFR Parts 180 and 3000. 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 he enters into.

By signing and submitting its Bid, the Contractor 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 proposer 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 or proposer agrees to comply with
the requirements of 49 CFR 29, Subpart C and 2 CFR 200, Appendix II (H) while this offer is
valid and throughout the period of any contract that may arise from this offer. The bidder or
proposer further agrees to include a provision requiring such compliance in its lower tier
• FTA requires that the Contractor, for major third party contracts, complete a certification entitled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion" for himself and his principals and requires each subcontractor or supplier (for subcontracts and supplier agreements expected to equal or exceed $25,000) to complete a certification entitled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tiered Covered Transactions" for himself and his principals. Copies of the required Certification forms and accompanying instructions are set forth following the clause herein entitled "Integrity Monitor".

• In the event that the Contractor has certified prior to award that he is not proposed for debarment, debarred, suspended, or voluntarily excluded from covered transactions by any Federal Department or agency and such certification is found to be false, this Contract may be canceled, terminated or suspended by the Authority and the Contractor will be liable for any and all damages incurred by the Authority because of such cancellation, termination or suspension because of such false certification.

• The Contractor shall obtain certifications from all known potential subcontractors and suppliers (for which payments are expected to equal or exceed $25,000) and submit such certifications to the address set forth in E below.

• Prior to the award of any subcontracts or supplier agreements expected to equal or exceed $25,000, regardless of tier, any prospective subcontractor or supplier who has not previously submitted a certification for this Contract must execute and submit to the Contractor a certification in the form set forth following the clause herein entitled "Integrity Monitor" which will be deemed a part of the resulting subcontract and supplier agreement.

• The originals of any Certifications or correspondence relating hereto shall be sent by the Contractor to the Chief Procurement Officer, 4 World Trade Center, 150 Greenwich Street – 21st Floor, New York, NY 10007.

• The Contractor shall not knowingly enter into any subcontracts or supplier agreements with a person that is proposed for debarment, debarred, suspended, declared ineligible or voluntarily excluded from covered transactions.

As required by FTA, the Contractor and his subcontractors or suppliers required to file the certification have a continuing duty to disclose, and shall provide immediate written notice to the Authority if, at any time, it learns that his certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

25. ACCESS TO RECORDS AND REPORTS

This section applies to all contracts except Micro-Purchases.

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 authorized representatives thereto, including any Project Management Oversight (PMO) Contractor, access to the Contractor's records and Construction sites pertaining to a major capital project, major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311.

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 from the beginning of the Project, and through the course of the Project, until three years after the Recipient has submitted its final expenditure report and other pending matters are closed. Project closeout does not alter the record retention requirements of the FTA Master Agreement, §9.

This requirement is independent of the Authority’s requirements for record retention contained elsewhere in the specifications.
CERTIFICATION REGARDING LOBBYING PURSUANT TO 31 U.S.C. 1352
(TO BE SUBMITTED WITH EACH BID OR OFFER EXCEEDING $100,000)

I, the undersigned ___________________________

(name of authorized officer) certify,

to the best of my knowledge and belief, that:

• No federally appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, or the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

• If any funds other than federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form LLL, “Disclosure of Lobbying, Activities” in accordance with its instructions.

• The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by, 31, U.S. C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.
Note: Pursuant to 31 U.S.C § 1352(c)(1)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such expenditure or failure.

The Contractor certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. § 3801, et seq., apply to this certification and disclosure, if any.

Executed this day_________________________ of __________, 201__

By: _______________________________________________________
    Signature of Authorized Official

_________________________________________________________
    Official Name and Title of Authorized Official
STANDARD FORM LLL - DISCLOSURE OF LOBBYING ACTIVITIES
Complete this form to disclose lobbying activities pursuant to 31 U.S.C.1352

<table>
<thead>
<tr>
<th>1. Type of Federal Action:</th>
<th>2. Status of Federal Action:</th>
<th>3. Report Type:</th>
</tr>
</thead>
<tbody>
<tr>
<td>a. contract</td>
<td>a. bid/offer/application</td>
<td>a. initial filing</td>
</tr>
<tr>
<td>b. grant</td>
<td>b. initial award</td>
<td>b. material change</td>
</tr>
<tr>
<td>c. cooperative agreement</td>
<td>c. post award</td>
<td>For material change only: Year_____ quarter_______ Date of last report____</td>
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<tr>
<td>d. loan</td>
<td></td>
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<tr>
<td>e. loan guarantee</td>
<td></td>
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<tr>
<td>f. loan insurance</td>
<td></td>
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</tr>
</tbody>
</table>

| 4. Name and Address of Reporting Entity: | 5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime: |
|-----------------------------------------|---------------------------------------------------------------------------------
|   Prime                                 |                                                                                  |
|   Subawardee Tier                      |                                                                                  |
|   Congressional District, if known:    |                                                                                  |

<table>
<thead>
<tr>
<th>6. Federal Department/Agency:</th>
<th>7. Federal Program Name/Description:</th>
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<table>
<thead>
<tr>
<th>8. Federal Action Number, if known:</th>
<th>9. Award Amount, if known:</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>$</td>
</tr>
</tbody>
</table>

10. a. Name and Address of Lobbying Registrant (if individual, last name, first name, MI):

| 11. Information requested through this form is authorized by title 31 U.S.C. Section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure. |

Print

Name: ________________________________
Title: ________________________________
Telephone No.: ________________________ Date: ___
INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal Recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. Section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.

2. Identify the status of the covered Federal action.

3. Identify the appropriate classification of this report. If this is a follow up report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.

4. Enter the full name, address, city, State and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward Recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.

5. If the organization filing the report in item 4 checks “Subawardee,” then enter the full name, address, city, State and zip code of the prime Federal Recipient. Include Congressional District, if known.

6. Enter the name of the federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.

7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.

8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitations for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., “RFP-DE-90-001.”

9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.

10. (a) Enter the full name, address, city, State and zip code of the lobbying registrant under the Lobbying Disclosure Act of 1995 engaged by the reporting entity identified in item 4 to influence the covered Federal action.

(b) Enter the full names of the individual(s) performing services, and include full address if different from 10(a). Enter Last Name, First Name, and Middle Initial (MI).

11. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

According to the Paperwork Reduction Act, as amended, no persons are required to respond to a collection of information unless it displays a valid OMB control Number. The valid OMB control number for this information collection is OMB No. 0348-0046. Public reporting burden for this collection of information is estimated to average 10 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, DC 20503
CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION - LOWER TIER COVERED TRANSACTIONS

1. The prospective lower tier participant,

_________________________________________, certifies by submission of this bid or proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

3. The prospective lower tier participant shall provide immediate written notice to the Authority (and the Contractor, if applicable) if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

Executed this day________________________ of____________________, 201____.

______________________________
BY SIGNATURE OF AUTHORIZED OFFICIAL

______________________________
NAME AND TITLE OF AUTHORIZED OFFICIAL
INSTRUCTIONS FOR COMPLETION OF CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION - LOWER TIER COVERED TRANSACTIONS

1. By signing and submitting this Proposal, the prospective lower tier participant is providing the signed certification set out on the previous page.

2. This certification is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the Authority may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the Authority if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms “covered transaction,” “debarred,” “suspended,” “ineligible,” “lower tier covered transaction,” “participant,” “persons,” “lower tier covered transaction,” “principal,” “proposal,” and “voluntarily excluded,” as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549 [49 CFR Part 29]. The Proposer may contact the Procurement Representative for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized in writing by the Authority.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include the “Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction,” without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List issued by U.S. General Service Administration.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under sub-paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to all remedies available to the Federal Government, the Authority may pursue all available remedies including suspension and/or debarment.

END OF FTA CONTRACT PROVISIONS
ATTACHMENT A-1: Disadvantaged Business Enterprise (DBE) Program

(Rev. 08/015/17)

1. Disadvantaged Business Enterprise (DBE) Program

A. POLICY

It is the policy of The Port Authority of New York and New Jersey (the “Port Authority” or the “Authority”) and its related entities, including Port Authority Trans-Hudson Corporation (“PATH”) that Disadvantaged Business Enterprises (“DBEs”) are provided the opportunity to participate in the performance of this Contract. Each proposer shall take all necessary and reasonable steps to ensure that its proposal includes DBE participation and performance of work on this Contract, when awarded. This Contract is subject to the United States Department of Transportation ("USDOT") regulations on "DBEs" contained in Part 26 of Title 49 of the Code of Federal Regulations.

The Proposer shall not discriminate on the basis of race, color, national origin, creed/religion, sex, age or handicap/disability in the performance of this contract. The Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of USDOT-assisted contracts. Failure by the Contractor or subcontractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the PANYNJ deems appropriate.

B. GOAL

The Port Authority Office of Business Diversity and Civil Rights (“OBDCR”) has established a goal for DBE participation on this Contract, which the proposer will be required to show how it will meet, if awarded this Contract. This goal, expressed as a percentage of the total contract price, including change orders issued pursuant to the changes provision of the contract, is:

DBE Participation Goal: 1%

for firms owned and controlled by socially and economically disadvantaged individuals (as defined in C.5 below) and certified as DBEs by the Authority. Eligible DBE firms are listed on the following Uniform Certification Programs (“UCPs”) websites:

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

New Jersey UCP – https://njucp.dbesystem.com
In the event the successful proposer’s proposed level of DBE participation is less than this prescribed level of DBE participation, to remain eligible for contract award, the successful proposer must satisfy the good faith efforts requirements set forth in paragraph I.3 below.

OBDCR is responsible for determining compliance by the proposer with DBE Program requirements established for this solicitation and in this Contract. The proposer shall make all DBE Program submissions required by this solicitation to the Port Authority Procurement Department contact with a copy to OBDCR. Once awarded, the successful proposer (Contractor) will make all DBE Program submissions to OBDCR at the following address and email address:

Contract Number:

Name: Jacqueline Carroll
Email: jacarroll@panynj.gov Telephone No.: (201) 395-3958
Address: The Port Authority of NY & NJ
2 Montgomery Street, 2nd Fl. Jersey City, NJ 07302

C. DEFINITIONS

1. To avoid undue repetition, the following terms, as used in this Agreement, shall be construed as follows: **Bidder or Proposer** can be used interchangeably and **Consultant or Contractor** can be used interchangeably.

2. **Certification** means the process by which a business demonstrates to OBDCR or to a New York State Unified Certification Program Certifying Partner (“NYSUCP”) or to a New Jersey Unified Certification Certification Partner (“NJUCP”) that it meets the requirements to be a DBE under USDOT regulations set forth in 49 C.F.R. Part 26.

3. **Disadvantaged Business Enterprise** or DBE is a for-profit small business concern (a) that is at least 51% owned by one or more individuals who are both socially and economically disadvantaged or, in the case of a corporation, in which at least 51% of the stock is owned by one or more such individuals; and (b) whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

4. **New York State Unified Certification Program Certifying Partners** include the Port Authority of New York & New Jersey, Metropolitan Transportation Authority, the Niagara Frontier Transportation Authority and the New York State Department of Transportation.

5. **New Jersey Unified Certification Program Certifying Partners** include the Port Authority of New York & New Jersey, New Jersey Transit and the New Jersey State Department of Transportation.
6. **Socially and economically disadvantaged individual** means any individual who is a citizen (or lawfully admitted permanent resident) of the United States and who is:
   
a. Any individual OBDCR or a NYSUCP or NJUCP Certifying Partner finds to be a socially and economically disadvantaged individual on a case-by-case basis.
   
b. Any individual in the following groups, members of which are rebuttably presumed to be socially and economically disadvantaged:
      
      1. **Black Americans** which includes persons having origins in any of the Black racial groups of Africa;
      
      2. **Hispanic Americans** which includes persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South America or other Spanish or Portuguese culture or origin, regardless of race;
      
      3. **Native Americans** which includes persons who are American Indians, Eskimos, Aleuts or Native Hawaiians;
      
      4. **Asian-Pacific Americans** which includes persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands (Republic of Palau), the Commonwealth of the Northern Marianas Islands, Macao, Fiji, Tonga, Kiribati, Juvalu, Nauru, Federated States of Micronesia, or Hong Kong;
      
      5. **Subcontinent Asian Americans** which includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka;
      
      6. **Women**; and
      
      7. Any additional groups whose members are designated as socially and economically disadvantaged by the Small Business Administration ("SBA"), at such time as the SBA designation becomes effective.

**D. THE DBE PROGRAM**

The Port Authority has established a Disadvantaged Business Enterprise (DBE) program in accordance with applicable United States Department of Transportation (USDOT) regulations in 49 CFR Part 26. The Port Authority receives Federal financial assistance from the Department of Transportation, and as a condition of receiving this assistance, the Port Authority has signed an assurance that it will comply with these regulations. It is the policy of the Port Authority to ensure that DBEs, as defined in 49 CFR Part 26, have an equal opportunity to receive and participate in USDOT-assisted contracts. It is also Port Authority policy:

1. **To ensure nondiscrimination in the award and administration of USDOT-assisted**
contracts;

2. To create a level playing field on which DBEs can compete fairly for USDOT-assisted contracts;

3. To ensure that the DBE program is narrowly tailored in accordance with 49 CFR Part 26;

4. To ensure that only firms that fully meet regulatory eligibility standards as outlined in 49 CFR Part 26 are permitted to participate as DBEs;

5. To help remove barriers to the participation of DBEs in USDOT-assisted contracts; and,

6. To assist the development of firms that can compete successfully in the market place outside the DBE program.

The Director of OBDCR has been delegated as the DBE Liaison Officer. In that capacity, the Director of OBDCR is responsible for implementing all aspects of the DBE program. Implementation of the DBE program is accorded the same priority as compliance with all other legal obligations incurred by the Port Authority in its financial assistance agreements with the USDOT.

The Port Authority has disseminated this policy statement to the Board of Commissioners and all the components of our organization. We have disseminated this statement to DBE and non-DBE business communities that perform work for us on USDOT-assisted contracts through posting on the OBDCR website: http://www.panynj.gov/business-opportunities/supplierdiversity.html

E. DBE OBLIGATION

The proposer agrees to take all necessary and reasonable steps to ensure that DBEs have the opportunity to compete for and perform work under this Contract, if awarded. (Note: If the total contract price is increased as a result of change orders, the Contractor shall make a good faith effort to achieve a commensurate increase in DBE participation). Submission of the proposal constitutes a certification and representation by the proposer that good faith efforts will be made to satisfy the DBE goal requirement in paragraph B during contract performance.

Furthermore, the Proposer will ensure that the following clause is placed in every contract or subcontract resulting from this Contract:

“The Contractor or subcontractor shall not discriminate on the basis of race, color, national origin, creed/religion, sex, age or handicap/disability, in the performance of this contract. The Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of USDOT-assisted contracts. Failure by the Contractor or subcontractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the PANYNJ deems appropriate.”

F. SUBMISSION OF DBE UTILIZATION PLAN

4
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. If the proposer determines it cannot make this assurance, it may nevertheless submit a bid or proposal, but in such event, it shall note on the DBE Goals Statement form the percentage of DBE participation it anticipates, including documentation supporting the good faith efforts made to achieve the goals set forth in the Contract.

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.
G. PROMPT PAYMENT AND RETAINAGE PROVISION

The Contractor agrees to pay each subcontractor under this prime contract for the satisfactory performance of its contract, no later than ten (10) days from the receipt of each payment the Contractor receives from the Authority. The Contractor agrees further to return all retainage, if any, owed to a subcontractor within ten (10) days after the subcontractor’s work is satisfactorily completed. Any delay or postponement of payment from the above referenced time-frame may occur only for good cause following written approval from the Port Authority. This clause applies to both DBE and non-DBE subcontractors. Failure to comply with this section may constitute a breach of contract, entitling the Port Authority to remedies provided herein, in addition to any other available remedy.

H. CREDIT TOWARD DBE GOAL

No credit toward meeting the DBE goal will be allowed unless OBDCR or a NYSUCP or NJUCP Certifying Partner has certified the DBE firm as eligible. Only the value of the work actually performed by the DBE will be counted toward the DBE goal. The DBE shall verify payments on the DBE Payment Request Certification Form attached to all invoices. The Authority will use the following guidelines to determine the amount to be counted toward the DBE goal:

1. OBDCR will credit the entire amount of fees or commissions charged by a DBE firm for providing a bona fide service, such as professional, technical, consultant, or managerial services, or for providing bonds or insurance specifically required for the performance of a USDOT-assisted contract, toward DBE goals, provided OBDCR determines the fee to be reasonable and not excessive as compared with fees customarily allowed for similar services.

2. When a DBE subcontracts part of the work of its contract to another firm, the value of the subcontracted work may be counted toward DBE goals only if the DBE’s subcontractor is itself a certified DBE. Work that a DBE subcontracts to a non-DBE firm does not count toward DBE goals.

3. Joint ventures between DBEs and non-DBEs may be counted toward the DBE goal in proportion to the total dollar value of the contract equal to the distinct, clearly defined portion of the work of the contract that the DBE performs with its own forces. Please contact the Office of Business Diversity and Civil Rights at (201) 395-3958 for more information about requirements for such joint ventures.

4. OBDCR will credit expenditures to a DBE subcontractor toward DBE goals, only if the DBE is performing a commercially useful function on the contract.

5. Commercially Useful Function
   
   A. A DBE is considered to perform a commercially useful function when it is responsible for the execution of a distinct element of work on a contract and carries out its responsibilities by actually performing, managing and supervising the work involved in accordance with normal industry practice. Regardless of
whether an arrangement between the Contractor and the DBE represents standard industry practice, if the arrangement erodes the ownership, control or independence of the DBE or in any other way does not meet the commercially useful function requirement, that firm shall not be included in determining whether the DBE goal is met and shall not be included in DBE reports. If this occurs with respect to a firm identified as a DBE, the Contractor shall receive no credit toward the DBE goal and may be required to backfill the participation. A DBE does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction or contract through which funds are passed in order to obtain the appearance of DBE participation. A DBE may rebut a determination by the Authority that the DBE is not performing a commercially useful function to the United States Department of Transportation (USDOT) funding agency (for example, FAA, FTA or FHWA).

B. Work Force. The DBE must employ a work force (including administrative and clerical staff) separate and apart from that employed by the Contractor, other subcontractors or their affiliates. This does not preclude the employment by the DBE of an individual that has been previously employed by another firm involved in the Contract, provided that the individual was independently recruited by the DBE in accordance with customary industry practice. The routine transfer of work crews from another employer to the DBE shall not be allowed.

C. Supervision. All Work performed by the DBE must be controlled and supervised by the DBE without duplication of supervisory personnel from the Contractor, their affiliates and other subcontractors performing Work on the Contract. This does not preclude routine communication between the supervisory personnel of the DBE and other supervisors necessary to coordinate the Work.

D. Equipment. DBE subcontractors may supplement their equipment by renting or leasing additional equipment in accordance with customary industry practice. If the DBE obtains equipment from the Contractor, other contractors or their affiliates, the DBE shall provide documentation to the Authority demonstrating that similar equipment and terms could not be obtained at a lower cost from other customary sources of equipment. The required documentation shall include copies of the rental or leasing agreements, and the names, addresses, and terms quoted by other sources of equipment.

E. If a DBE does not perform or exercise responsibility for at least 30 percent of the total cost of its contract with its own work force, or the DBE subcontracts a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work involved, OBDCR will presume that it is not performing a commercially useful function.

6. Counting DBE Participation

When a certified DBE firm is awarded the Contract, the DBE goals shall be deemed to have been met.
The value of the Work performed by a DBE, including that of a DBE prime contractor, with its own equipment, with its own forces, and under its own supervision, will be counted toward the DBE goal, provided the utilization is a commercially useful function. Work performed by DBEs will be counted as set forth below. If the Authority determines that some or all of the DBE's work does not constitute a commercially useful function, only the portion of the work considered to be a commercially useful function will be credited toward the DBE goal.

A. Subcontractors. 100 percent of the value of the Work to be performed by a DBE subcontractor will be counted toward the DBE goal. The value of such Work includes the cost of materials and supplies purchased by the DBE, except the cost of supplies or equipment leased from the Contractor, other subcontractors or their affiliates will not be counted. When a DBE subcontracts part of the work of its contract to another firm, the value of the subcontracted work may be counted toward DBE goals only if the DBE's subcontractor is itself a DBE. Work that a DBE subcontracts to a non-DBE firm does not count toward DBE goals.

B. Manufacturers/Fabricators. 100 percent of the expenditure to a DBE manufacturer or fabricator will be counted towards the DBE goal.

C. Material Suppliers. 60 percent of the expenditure to a DBE material supplier will be counted toward the DBE goal. Packagers, brokers, manufacturer’s representatives, or other persons who arrange or expedite transactions are not material suppliers within the meaning of this paragraph.

D. Brokers/Manufacturer’s Representatives. 100 percent of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees for transportation charges for the delivery of materials or supplies provided by a DBE broker/manufacturer’s representative will be counted toward the DBE goal, provided they are determined by the Authority to be reasonable and not excessive as compared with fees customarily allowed for similar services. The cost of the materials and supplies themselves will not be counted.

E. Services. 100 percent of fees or commissions charged by a DBE for providing a bona fide service, such as professional, technical, consultant, or managerial services, or for providing bonds or insurance specifically required for the performance of the Work will be counted toward the DBE goal, provided the fee is reasonable and not excessive as compared with fees customarily allowed for similar services.

F. Trucking Operations. The DBE trucking firm of record is the firm that is listed on the DBE Participation Plan. The DBE trucking firm shall own and operate at least one registered, insured and fully operational truck used for the performance of the Work and shall be responsible for the management and supervision of the entire trucking operation on a particular contract, and there cannot be a contrived arrangement for the purpose of meeting the DBE goal. The DBE trucking firm of record shall control the day-to-day DBE trucking operations for performance of the Work, and shall be responsible for (1) negotiating and executing rental/leasing agreements; (2) hiring and terminating the work force; (3) coordinating the daily
1. DBE Owned/Leased Trucks. 100% of the value of the trucking operations the DBE provides for the performance of the work using trucks it owns and trucks that are registered, insured and operated by the DBE using drivers it employs, will be counted toward the DBE goal.

2. DBE Leased Trucks. The DBE may lease trucks from another DBE, including an owner/operator who is certified as a DBE. 100% of the value of the trucking operations that the lessee DBE provides will be counted toward the DBE goal.

3. Non-DBE Trucks. The DBE may lease trucks from non-DBE firms and owner-operators. The value of these trucking services will be counted toward the DBE goal up to the value of services performed by the DBE trucks used on the Contract. DBE participation can be counted for the value of the services of non-DBE trucks that exceed the value of the services performed by DBE trucks only in the amount of the fee or commission a DBE receives as a result of the lease agreement.

G. Joint Venture Joint ventures between DBEs and non-DBEs will be counted toward the DBE goal in proportion to the total dollar value of the Contract equal to the distinct, clearly defined portion of the Work of the Contract that the DBE performs with its own forces. The joint venture agreement is therefore subject to review by OBDCR, a copy of which is to be furnished by the firm to be awarded the Contract before execution of the Contract.

7. If a firm is not currently certified as a DBE in accordance with 49 CFR Part 26 at the time of the execution of the Contract, OBDCR will not credit the firm’s participation toward any DBE goals, except as provided for in 49 CFR Section 26.87(i).

8. When a firm loses its DBE certification, OBDCR will follow the applicable regulations in 49 CFR Section 26.87(j).

   a. If a contract or subcontract has not been executed with the firm prior to notification of its ineligibility, any participation by the ineligible firm will not be counted toward the contract or overall goal. OBDCR will direct the Contractor to meet the contract goal with an eligible DBE firm or demonstrate good faith efforts to do so.

   b. If a contract or subcontract has been executed with the firm prior to notification of its ineligibility, the Contractor may continue to receive credit toward its DBE goal for the firm’s work.

9. OBDCR will not credit toward the DBE goal the participation of a DBE subcontractor until the amount being counted toward the goal has actually been paid to the DBE, as evidenced by submission of the Statement of Payments to DBE Subcontractors / Lessors / Suppliers and the DBE Payment Request Certification Form.

I. **CONTRACT AWARD**
1. Only proposers who submit proposals that meet the DBE goal or who demonstrate good faith efforts to meet the DBE goal, as herein provided will be eligible for award of the Contract.

2. If the successful proposer does not reach the DBE goal, the proposer shall nevertheless remain eligible for award of the contract if it can demonstrate to the satisfaction of OBDCR that it has made a good faith effort to meet the DBE goal. In making such a determination, OBDCR shall consider, among other things, the criteria set out in subparagraph 3 below.

3. Demonstration of Good Faith Efforts

To demonstrate a good faith effort to meet the DBE contract goal, a proposer shall submit with the DBE Goals Statement form (Appendix A1) a list of the steps it has taken to obtain DBE participation, together with documentation supporting those steps. Such efforts may be demonstrated by showing the following:

a. That the proposer attended any pre-solicitation or pre-bid meetings that were scheduled by the Port Authority to inform DBEs of contracting and subcontracting opportunities;

b. That the proposer advertised in general circulation, trade association, and minority-focus media, at least 15 days before proposal due date, to request DBE subcontract performance on the specific project;

c. That the proposer provided written notice to a reasonable number of specific DBEs that their interest in the contract was being solicited, in sufficient time to allow the DBEs to participate effectively;

d. That the proposer followed up initial solicitations of interest by contacting DBEs to determine with certainty whether the DBEs were interested in participating in the project;

e. That the proposer selected portions of the work to be performed by DBEs in order to increase the likelihood of meeting the DBE goal (including where appropriate, breaking down contracts into economically feasible units to facilitate DBE participation);

f. That the proposer provided interested DBEs with adequate information about the plans, specifications and requirements of the contract;

g. That the proposer negotiated in good faith with interested DBEs, not rejecting DBEs as unqualified without sound reasons based on a thorough investigation of their capabilities. Documented efforts of negotiations with DBEs must include at a minimum:

1. The names, addresses and telephone numbers of DBEs that were considered;

2. A description of the information provided to DBEs regarding the plans
and specifications for portions of the work to be performed;

3. A statement explaining why agreements with the DBEs could not be reached.

h. That the proposer made efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance required by the Port Authority or Consultant;

i. That the proposer made efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services; and

j. That the proposer effectively used the services of available minority/women community organizations; minority/women contractor’s groups; local, state and federal minority/women business assistance offices; and other organizations that provide assistance in the recruitment and placement of DBEs.

4. Reconsideration of Good Faith Efforts Determination

In determining whether a proposer has demonstrated good faith efforts, the Port Authority will look at all efforts that the proposer has made. If OBDCR determines that the successful proposer has failed to make good faith efforts to meet the DBE goal, that firm’s submission may be deemed non-responsive. The non-responsive firm will have an opportunity for administrative reconsideration, in accordance with the Port Authority’s Protest Procedures. In accordance with the Protest Procedures, as part of this reconsideration, the proposer will have the opportunity to provide written documentation or argument concerning the issue of whether it met the goal or made adequate good faith efforts to do so. In accordance with the Protest Procedures, a written decision will be sent to the proposer explaining the basis for finding that the proposer did or did not meet the goal or make adequate good faith efforts to do so.

**J. 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. For submittal of modifications to the DBE Plan, Contractors are directed to use Appendix A3 which may be downloaded at http://www.panynj.gov/business-opportunities/pdf/PA4242.pdf.

K. EEO/NON-DISCRIMINATION

During the performance of this Contract, the Contractor hereby agrees that no person on the ground of race, color, national origin, creed/religion, sex, age or handicap/disability shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the furnishing of goods or services or in the selection and retention of subcontractors and/or vendors under this Contract. Contractor shall also ascertain and comply with all applicable federal, state and local laws, ordinances, rules, regulations, and orders that pertain to equal employment opportunity, affirmative action, and non-discrimination in employment, including 49 CFR Part 26.

L. OFFICE OF THE INSPECTOR GENERAL

The Port Authority Office of Inspector General (OIG) is responsible for investigating fraud and misconduct by Port Authority contractors, subcontractors, consultants, suppliers and others, including the DBE Program.

Depending upon the dollar value of the construction project, and regulatory requirements, the OIG might engage the services of an Integrity Monitor who reports to the OIG and assists in monitoring compliance governing the DBE program.

The OIG and its Integrity Monitors may perform on-site investigations and payment verifications, review relevant consultant, contractor, subcontractor and supplier documents, including but not limited to financial records, certificates and licenses, certified payroll reports, and employee sign-in sheets. They may also interview officers and employees of these firms either on-site, at their offices, or at any other location the OIG determines is in the best interest of the Port Authority.

All consultants, contractors, subcontractors, suppliers and others who are participating in the DBE Program in any manner, shall cooperate fully with the Port Authority OIG and shall provide all requested documents immediately upon request. The failure to cooperate may be considered a breach of contract, entitling the Port Authority to remedies provided herein, in addition to any other available remedy.

M. PROTECTING AGAINST TERMINATION FOR CONVENIENCE

Contractor must give a DBE subcontractor five (5) days to respond to the Contractor's notice of termination and the subcontractor must advise the Authority/PATH and the Contractor of the reasons, if any, why it objects to the proposed termination of its subcontract and why the Authority/PATH should not approve the Contractor's action. If required in a particular case as a matter of public necessity (e.g. safety), the Authority/PATH may provide a response period shorter than five (5) days.
N. CONTRACT ASSURANCE

The Contractor, subrecipient or any of its subcontractors shall not discriminate on the basis of race, color, national origin, creed/religion, sex, age or handicap/disability in the performance of this contract. The Contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT-assisted contracts. Failure by the Contractor to carry out these requirements is a material breach of this Contract, which may result in the termination of this Contract or such other remedy as the Authority/PATH deems appropriate, which may include, but is not limited to:

1. Withholding monthly progress payments;
2. Assessing sanctions;
3. Liquidated damages; and/or
4. Disqualifying the contractor from future bidding as non-responsible.

The Contractor shall include the foregoing language of this section in its subcontracts under this Contract, and further agrees to provide the Authority/PATH with copies of its subcontracts with its request for subcontractor approval, as well as upon request of the Authority/PATH.

O. APPENDICES

1. APPENDIX A1: DBE Goals Statement
2. APPENDIX A2: DBE Participation Plan and Affirmation Statement
3. APPENDIX A3: Modified DBE Participation Plan and Affirmation Statement
4. APPENDIX A4: Information On Solicited Firms
5. APPENDIX A5: Pre-Award DBE Trucking Commitment Form
6. APPENDIX A6: DBE Regular Dealer Verification Form
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.
STATE OF ______________)

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

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.
STATE OF ____________________) 
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)
The bidder must complete this form for itself and for all firms which gave the bidder a quotation for any work planned to be subcontracted regardless of whether they are ultimately chosen to participate in the Contract. Provide the information required below for every firm that provided a bid or a quote for a subcontract – even if the bid or quote from the firm is not used in the preparation of the final Proposal.

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<th>Address of Firm</th>
<th>Phone Number</th>
<th>Contact Person</th>
<th>Firm Age</th>
<th>Annual Gross Revenue Range</th>
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</table>

Footnote: Annual Gross Revenue Ranges: Less than $500,000; $500,000 - $1 Million; $1 - $2 Million; $2 - $5 Million; Over $5 Million - Select the category that best identifies the annual gross revenue of the solicited firm.

I _______________________ (print name), an officer of __________________________ (company name), certify that I have read the Appendix A4 – INFORMATION ON SOLICITED FIRMS 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.
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 COMMERCIAL 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 _______________) )
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)
(To be completed by DBE firm and signed by Prime Contractor)

<table>
<thead>
<tr>
<th>Project Number:</th>
<th>Telephone # of Prime</th>
</tr>
</thead>
<tbody>
<tr>
<td>Prime Contractor:</td>
<td></td>
</tr>
<tr>
<td>DBE Firm:</td>
<td></td>
</tr>
</tbody>
</table>

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.

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? . . . . .

**Authorized Representative of DBE Firm**

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

**Authorized Representative of Prime Contractor**

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.

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

APPENDIX A6
DBE REGULAR DEALER VERIFICATION FORM (reverse)

STATE OF _________________ )
 )ss:
COUNTY OF _________________ )

On the ___ day of _________________ in the year ___ , 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)
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.