

REQUEST FOR QUOTATION

Vendor No., Name, Address (insert here): Port Authority Procurement Contact: John Santiago/212-435-4613/john.santiago@panynj.gov	Collective/Bid# Bid Due Date 55823 / 01/10/2019 Bids must be received no later than 11:00 AM on the above Bid Due Date (see instructions). Deliver Goods/Services To: PATH Consolidated Maintenance Shop 120 Academy Street Jersey City, NJ 07302
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Quantity	Description	Unit Price	Total
	RE-BID: SUPPLY AND DELIVER MATERIAL CARTS TO PATH NOTE: These items may be federally funded in whole or in part by the Federal Transit Administration (FTA). Accordingly, FTA requirements are part of the agreement and will be applicable to the supply of such items. <p style="text-align: center;">THIS IS A FORMAL BID INVITATION</p> I. The following documents are attached and incorporated by reference as part of this Bid and shall be made part of the Purchase Order resulting from this Bid: 1. The following are bid submittal requirements contained within the Federal Transit Administration (FTA) Requirements and/or solicitation documents: <ul style="list-style-type: none"> a) Purchase Order Terms and Conditions b) Federal Transit Administration Contract Provisions for Grants before December 26, 2014 c) Appendix A1: DBE Goals Statement d) Appendix A2: DBE Participation Plan and Affirmation Statement e) Appendix A4: Information on Solicited Firms f) Appendix A5: Pre-Award DBE Trucking Commitment Form g) Appendix A6: DBE Regular Dealer Verification Form NOTE: Appendix A3: Modified DBE Participation Form and Affirmation Statement, is neither included with this solicitation nor required at the time of Bid submission.		
	PLEASE QUOTE FULLY DELIVERED PRICES	PAYMENT TERMS	Total Delivered Price

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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 _____

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	II. Additional Bid Submission Requirements: a) Bidders shall submit with their Bids one (1) copy of a specification sheet or other documentation on the proposed product that is sufficient for PATH to facilitate an evaluation. III. Port Authority Code of Ethics Seller's attention is directed to the Port Authority's "Code of Ethics for Port Authority Vendors" (the "Code"). Vendors must certify in writing that they will comply with every aspect of this Code. The seller should submit an executed Compliance Certification with their Quotation. The Compliance Certification, once executed, will be a material and integral part of any agreement resulting from this solicitation. The Code and the Compliance Certification can be found on the Port Authority's website at https://www.panynj.gov/business-opportunities/become-vendor.html . An executed Compliance Certification should be submitted with the seller's quote. Violations of the law or of the Code may subject a Vendor or a Vendor's Employees to civil or criminal penalties. In addition, in the case of violation of any provision of the law or the Code, the Port Authority may pursue any available remedy, including, but not limited to, determining that a Vendor is in material breach of its contract and/or that, in the future, the Port Authority will have no further commercial dealings with the Vendor.		
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	<p>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 Vendor shall deliver within its quoted Lead Time.</p> <p>The Purchase Order shall expire no later than thirty (30) days from the quoted lead time.</p> <p>The prices quoted on this Request for Quotation form shall be in United States Dollars. All figures inserted will be interpreted as being quoted in United States Dollars. Delivery term is FOB Destination.</p>		
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	<p>This is a Formal Bid Invitation</p> <p>Bid Submission Instructions:</p> <p>Sealed Bids must be submitted to and received at the following address by the due date and time listed on this Request for Quotation, where they will be publicly opened and read:</p> <p>The Port Authority of NY & NJ Attn: Bid Custodian Procurement Department 4 World Trade Center 150 Greenwich Street, 21st Floor New York, NY 10007</p> <p>Clearly mark the outside of your envelope/package with "BID ENCLOSED", the Collective/Bid Number and Due Date, and your complete company name and address.</p> <p>Bids are only accepted Monday through Friday, excluding Port Authority holidays, between the hours of 8 A.M. & 5 P.M., via regular mail, express delivery service or hand delivery. Express carrier deliveries by commercial vehicles can be made via vendors approved by Silverstein Properties, the 4 World Trade Center (4WTC) Property Manager, through the Vehicle Security Center (VSC). Presently, UPS is the only delivery vendor with approved recurring delivery times. There is extensive security at the World Trade Center Site.</p>		
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	<p>Individuals must present a valid government-issued photo ID to enter 4 WTC. Individuals without packages or carrying small packages or boxes that can be conveyed by hand or on a hand truck may enter through the lobby. All envelopes, packages and boxes may be subject to additional security screening.</p> <p>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.</p> <p>A valid government-issued photo ID is required to gain access into the building to attend the bid opening or hand deliver a bid. Bids that are not received by the bid custodian by the scheduled bid opening date will be considered late.</p> <p>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 http://www.panynj.gov/business-opportunities/bid-proposaladvertisements.html and download any addenda that might have been issued in connection with this solicitation.</p>		
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3 EA	The material carts will be used to mount a pump to the deck of the cart. The pump will be mounted directly to the material cart frame. 1. All equipment and components furnished under this specification shall be new, unused and of current manufacture, and shall equal or exceed the following unless otherwise specified. 2. Design, construction, and materials used in the unit shall assure that it will function reliably and efficiently in sustained operation under hard usage in an adverse railway environment. 3. Each unit shall be free from defects such as incomplete welds, welds that cross welds, corrosion, loose or improper fastenings, leaks or contamination, and any other defects that could impair its operation or serviceability. 4. The design of the unit shall provide for ease of service, replacement and adjustment of components, with a minimum disturbance of other components. 5. All units shall comply with all Federal and State environmental safety and health regulations, and the current AREMA specifications in force at the time of delivery. In the event of conflict or variation between the regulations and these specifications, the most restrictive requirement will apply.		
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	6. Operational Requirements: a) 8' 0" wide by 17'0" long b) 30,000 pound capacity 16" hardened forged steel wheels c) Fail safe brakes on all 4 wheels (Disk brakes not acceptable) d) Heavy duty pintle hook on both ends (equivalent to capacity of cart design). e) Minimum of 1/4" thick diamond plate deck f) Track gauge of 56-1/2" g) Wheels and axles are to be non-insulated (shall not be converted from insulated design by bonding around insulated parts), complete with grease fittings. Axles shall utilize double row, tapered roller type axles bearings. Where pillow block bearings are used, they shall be self-aligning, double row, non-expansion, roller type axle bearings, and shall have cast steel or ductile iron housing and their location is to be fixed to avoid movement. h) The frame, axles, wheels, and bearings must be designed to withstand maximum stresses induced under normal operating and travel conditions. The unit shall withstand a free drop of six inches without damage. i) Wheel contour and gage shall comply with the standards set by AREMA or AAR (Mechanical Division) as required for size and type of wheels furnished. j) All welding and joint preparation is to follow the latest structural welding code.		
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	k) Must be designed to travel fully loaded or empty around a 65' curve. Frame must be sufficiently flexible, for at least one wheel to be free to float, so that any wheel can drop below the plane established by the other wheels. The amount of drop in inches shall be equal to, or greater than, the wheel base of the machine in feet divided by eight. 7. PAINT a) Units are to be cleaned and primed painted. b) The complete unit must be painted yellow as per AREMA standard spec. No. 13538 (Federal Standard 595-B, Colors used in Government Procurement) with the exception of the following: i) Wheels, hand rails, stakes and steps to be painted BLACK ii) Lifting and tie down lugs to be painted BLACK iii) Safety Locks to be painted RED iv) Stenciling to be BLACK v) Manufacturer shall stencil each unit with the following information on both sides in standard measures: a) Total weight of unit empty b) Maximum weight unit can carry c) Overall length d) Overall width e) Overall height above top of Rail 8) No excessive vibration, wobble, or eccentric action is to occur at any speed for which the machine is intended (maximum 25 mph)		
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	9. AIR: a) When air is removed from brakes, all brakes are to be applied and be able to hold a fully loaded cart on a 5% grade. b) If air is removed, such as a breakaway, air shall be expelled from holding tanks and brake lines and all brakes applied fully within 5 seconds of losing air. 10. All bolted applications must have at least two full threads protruding beyond the nut after the fastener has been properly torqued. Estimated Lead Time A.R.O.: _____		
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CODE OF ETHICS FOR PORT AUTHORITY VENDORS: COMPLIANCE CERTIFICATION

_____ (the “Vendor”) has reviewed the Code of Ethics for
(Legal Business Name of Entity)
Port Authority Vendors (the “Code”).

Vendor understands that the Vendor and Vendor’s Employees must comply with the requirements of this Code in connection with any work being performed on behalf of the Port Authority and whenever they are on property, used, owned or controlled by the Port Authority.

The Vendor understands that violations of the law or of this Code may subject a Vendor or a Vendor’s Employees to civil or criminal penalties. In addition, in the case of violation of any provision of the law or this Code, the Port Authority may pursue any available remedy, including, but not limited to, determining that a Vendor is in material breach of its contract and/or that, in the future, the Port Authority will have no further commercial dealings with the Vendor.

This Compliance Certification must be submitted to the Port Authority in accordance with the instructions in any solicitation, or as otherwise requested.

This Compliance Certification must be executed, and provided to the Port Authority, before Vendor begins work on a Port Authority project and before Vendor can receive payment in connection with a Port Authority project. This Compliance Certification, once executed, will be a material and integral part of the contract between the Vendor and the Port Authority. If this Compliance Certification was submitted in response to a solicitation, it will become a material and integral part of any contract between the Vendor and the Port Authority resulting from that solicitation.

A copy of this Compliance Certification must be retained by the Vendor, unless and until the Port Authority indicates that the Certifications may be disposed of.

Number/Name of Solicitation/Contract/Agreement

By signing below, I represent that I am authorized to execute this Compliance Certification on behalf of Vendor.

Signature _____ Date _____

Print Name _____

Title _____

PORT AUTHORITY OF NY & NJ
TERMS AND CONDITIONS

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

2. **WARRANTY** – The vendor warrants that the supplies or equipment delivered hereunder shall be free from all defects in material and workmanship and shall comply with all the requirements of this Order for a period of one (1) year from date such supplies or equipment are placed in use.

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

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

4. In the event of a discrepancy between unit prices and total prices, unit prices will govern.

5. **ACCEPTANCE**- Acceptance of vendor's offer will be only by Purchase Order Form signed by the Authority.

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

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

8. **VARIATION IN QUANTITY** – No variation in the quantity of any item called for by this Purchase Order will be

accepted unless such variation has been caused by conditions of loading, shipping, or packing, or allowances in manufacturing processes, and then only to the extent, if any, specified elsewhere in this Purchase Order.

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

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

11. All notices in connection with this agreement shall be sent by the vendor to the Port Authority of NY & NJ, Manager, Commodities and Services, Procurement Department, 4 World Trade Center, 150 Greenwich Street, 21st Floor, New York, NY 10007.

12. **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 vendor for cause or when it is in the Authority's best interest (for convenience), pursuant to 44 C.F.R. 13.36 (i)(2) or 2 CFR 200, Appendix II (B), as may be applicable. In the event of termination for convenience, the vendor will be paid its costs, including contract close-out costs, as provided for in the Contract, for work performed up to the time of termination for convenience.

a. Termination for Cause

i. If any of the following shall occur:

1. The vendor 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 vendor; or

2. The vendor 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 the Port Authority (except where fulfillment of its obligations requires activity over a greater period of time, and the vendor 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 vendor to terminate this Contract and the rights of the vendor hereunder, termination to be effective upon the date and time specified in such notice. Termination shall not relieve the vendor of any liabilities which shall have accrued on or prior to the effective date of termination.

- ii. 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 vendor hereunder, such termination or suspension to be effective upon the date specified in such notice.
- iii. No payment by the Port Authority of any monies to the vendor for any period or periods after default of any of the terms, covenants or conditions hereof to be performed, kept and observed by the vendor 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 maybe entitled because of any breach thereof. No waiver by the Port Authority of any default on the part of the vendor in the performance of any of the terms, covenants and conditions hereof to be performed, kept or observed by the vendor 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.

b. Termination for Convenience

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 vendor hereunder for convenience at any time upon five (5) days written notice to the vendor; 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 vendor 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.

c. Rights and Remedies

- i. If (1) the vendor fails to perform any of its obligations under this Contract or any other agreement between the Port Authority or PATH and the vendor (including its obligation tithe Port Authority or PATH 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 the Port Authority or PATH) or (2) any claim (just or unjust) which arises out of or in connection with this Contract or any other agreement between the Port Authority or PATH and the vendor is made against the Port Authority or PATH or (3) any subcontractor under this Contract or any other agreement between the Port Authority or PATH and the vendor 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 the Port Authority or PATH and the vendor or (4) if in the opinion of 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 vendor'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 vendor shall be improperly delayed, the Port Authority will pay the vendor 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 vendor because of such delay.
- ii. If the Port Authority has paid any sum or has incurred any obligation or expense which the vendor 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 vendor 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 vendor contrary to the said conditions, covenants and agreements, the vendor 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 vendor.

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

iv. The Port Authority shall also have the rights set forth above in the event the vendor 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.

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

14. The Authority shall have the absolute right to reject any or all proposals or to accept any proposal in whole or part and to waive defects in proposals.

15. If the vendor fails to perform in accordance with the terms of this Purchase Order, the Authority may obtain the goods or services from another vendor and charge the vendor the difference in price, if any, a reletting cost of \$100, plus any other damages to the Authority.

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

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

18. The Authority has adopted a policy set forth in full on PA 3764A, that it will honor a determination by an agency of the State of New York or New Jersey that a bidder is not eligible to bid on or be awarded public contracts because the bidder has been determined to have engaged in illegal or dishonest conduct or to have violated prevailing wage legislation. The Terms and Conditions of PA 3764A apply to this order. A copy can be obtained at <http://www.panynj.gov/business-opportunities/pdf/PA3764A.pdf> or by calling (212) 435- 4600.

19. The vendor may subcontract the services or use a supplier for the furnishing of materials required hereunder to such persons or entities as the Manager, Procurement may from time-to-time expressly approve in writing. All further subcontracting shall also be subject to such approval. All persons to whom the vendor sublets services shall be deemed to be its agents and no subletting or approval thereof shall be deemed to release this vendor from its obligations under this Contract or to impose any obligations on the Port Authority to such subcontractor or to give the subcontractor any rights against the Port Authority.

20. **Records and Reports-** The vendor shall set up, keep and maintain (and shall cause its subcontractors to set up, keep and maintain) in accordance with generally accepted accounting practice during the term of this Agreement and any extensions thereof and for three years after the expiration, termination or revocation thereof, records, payroll records and books of account (including, but not limited to, records of original entry and daily forms, payroll runs, cancelled checks, time records, union agreements, contracts with health, pension and other third party benefit providers) recording all transactions of the vendor (and its subcontractors), at, through or in any way connected with or related to the operations of the vendor (and its subcontractors) hereunder, including but not limited to all matters relating to the charges payable to the vendor hereunder, all wages and supplemental benefits paid or provided to or for its employees (and its subcontractors' employees) and such additional information as the Port Authority may from time to time and at any time require, and also including, if appropriate, recording the actual number of hours of service provided under the Contract, and keeping separate records thereof which records and books of account shall be kept at all times within the Port District. The vendor shall permit (and cause its subcontractors to permit) in ordinary business hours during the term of this Agreement including any extensions thereof and for three years thereafter the examination and audit by the officers, employees and representatives of the Port Authority of such records and books of account and also any records and books of account of any company which is owned or controlled by the vendor, or which owns or controls the vendor if said company performs services similar to those performed by the vendor

anywhere in the Port District. However, if within the aforesaid three-year period the Port Authority has notified the vendor in writing of a pending claim by the Port Authority under or in connection with this Contract to which any of the aforesaid records and documents of the vendor or of its subcontractors relate either directly or indirectly, then the period of such right of access shall be extended to the expiration of six years from the date of final payment with respect to the records and documents involved.

Upon request of the Port Authority, the vendor shall furnish or provide access to the federal Form I-9 (Employment Eligibility Verification) for each individual performing work under this Contract. This includes citizens and noncitizens.

The vendor shall, at its own expense (and cause its subcontractors at their expense) to install, maintain and use such equipment and devices for recording the labor hours of the service as shall be appropriate to its business and necessary or desirable to keep accurate records of the same and as the general manager or the Facility Manager may from time to time require, and the vendor shall (and cause its subcontractors to) at all reasonable times allow inspection by the agents and employees of the Port Authority of all such equipment or devices.

- a. The vendor hereby further agrees to furnish to the Port Authority from time to time such written reports in connection with its operations hereunder as the Port Authority may deem necessary or desirable. The format of all forms, schedules and reports furnished by the vendor to the Port Authority shall be subject to the continuing approval of the Port Authority.
- b. No provision in this Contract giving the Port Authority a right of access to records and documents is intended to impair or affect any right of access to records and documents which they would have in the absence of such provision. Additional record keeping may be required under other sections of this Contract.

21. **NON-LIABILITY** – Neither the Commissioners of the Port Authority nor any of them, nor any officer, agent or employee thereof, shall be charged personally by 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.

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

23. If the vendor's office set forth herein is not located in the states of New York or New Jersey, this agreement shall be construed in accordance with the laws of the State of New York, not including conflict of law provisions.

24. The PA has transitioned to an all electronic method of paying its vendors and contractors via an Automated Clearing House (ACH) funds transfer. The Vendor must complete the Port Authority's "Authorization Agreement For Direct Deposits And Direct Payments (ACH Credits)" form, which is available at <http://www.panynj.gov/business-opportunities/pdf/ach-authorization-form.pdf>, in order to receive payment. To avoid delays in payments for commodities and services provided, vendors and contractors must be enrolled in ACH. Printed accounts payable checks will not be issued. The Authorization Agreement shall remain in full force and effect until the Port Authority has received written notification from the Vendor of its termination in such time and in such manner as to afford the Port Authority and the depository financial institution(s) a reasonable opportunity to act on it. Any questions on this initiative may be directed to the ACH Enrollments contact line at 201 216-6002 or emailed to ACHENROLLMENT@PANYNJ.GOV.

25. **Non-Discrimination Requirements**- The vendor shall take all necessary and reasonable steps to ensure non-discrimination in the performance and administration of all aspects of this Purchase Order.

- a. Vendor 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 Purchase Order. Vendor 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. Vendor agrees that these "Non-Discrimination Requirements" are a binding part of this Purchase Order. Without limiting the generality of any other term or provision of this Purchase Order, in the event the Authority, or a state or federal agency finds that the Vendor or any of its subcontractors or vendors has not complied with these "Non-Discrimination Requirements", the Authority may cancel, terminate or suspend this Purchase Order in accordance with Clause 12 of these Terms and Conditions.

Vendor 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".

26. **DISADVANTAGED BUSINESS ENTERPRISES (DBE) PROGRAM**: The Contract resulting from this Bid is subject to the United States Department of Transportation regulations on Disadvantaged Business Enterprises (DBE's) contained in Part 26 of Title 49 of the Code of Federal

Regulations. These DBE requirements, including the goal for DBE participation for the Contract, are set forth in Attachment A-1, Disadvantaged Business Enterprise (DBE) Program, which is incorporated herein by reference. This goal applies to firms owned and controlled by disadvantaged individuals¹ and certified as DBE's by the Authority.

27. CERTIFICATION OF RECYCLED MATERIALS- Bidders are requested to submit, with their bid, a written certification entitled "Certified Environmentally Preferable Products /Practices" attached hereto as "Attachment I-A", attesting that the products or items offered by the Bidder contain the minimum percentage of post-consumer recovered material in accordance with the most recent guidelines issued by the United States Environmental Protection Agency (EPA), or, for commodities not so covered, the minimum percentage of post-consumer recovered materials established by other applicable regulatory agencies. The data submitted by the Bidder in Attachment I-A is being solicited for informational purposes only. Recycling Definitions:

For purposes of this solicitation, the following definitions shall apply:

- a. "Recovered Material" shall be defined as any waste material or by-product that has been recovered or diverted from solid waste, excluding those materials and by-products generated from, and commonly reused within, an original manufacturing process.
- b. "Post-consumer Material" shall be defined as any material or finished product that has served its intended use and has been discarded for disposal or recovery having completed its life as a consumer item. "Post-consumer material" is included in the broader category of "Recovered Material".
- c. "Pre-consumer Material" shall be defined as any material or by-product generated after the manufacture of a product but before the product reaches the consumer, such as damaged or obsolete products. Pre-consumer Material does not include mill and manufacturing trim, scrap, or broken material that is generated at a manufacturing site and commonly reused on-site in the same or another manufacturing process.
- d. "Recycled Product" shall be defined as a product that contains the highest amount of post-consumer material practicable, or when post-consumer material is impracticable for a specific type of product, contains substantial amounts of Pre-Consumer Material.
- e. "Recyclable Product" shall be defined as the ability of a product and its packaging to be reused, reconditioned for use, or recycled through

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existing recycling collection programs.

- f. "Waste Reducing Product" shall be defined as any product that will result in less waste generated due to its use rather than another product designed to serve the same function with a greater waste generation rate. This shall include, but not be limited to, those products that can be reused, refilled or have a longer life.

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

29. FINANCIAL INFORMATION. The Bidder will be required to demonstrate that it is financially capable of performing the Contract resulting from this Bid. The determination of the Bidder's financial qualifications and ability to perform this Contract will be made by the Port Authority in its sole discretion. The apparent lowest Bidder may be required to submit, upon request, information including but not limited to the following:

- (a) Certified financial statements; (b) either reviewed or compiled statements from an independent accountant setting forth the aforementioned information shall be provided, (c) financial statements containing such information prepared directly by the Bidder if accompanied by a signed copy of the Bidder's most recent Federal income tax return and a statement in writing from the Bidder, signed by an executive officer or his/her authorized designee, that such statements accurately reflect the present financial condition of the Bidder (d) a statement in writing, signed by an executive officer of the Bidder or his/her designee, that the present financial condition of the Bidder is at least as good as that shown on the statements submitted; (e) Bidder's statement of work on hand, including any work on which a Bid has been submitted, containing a description of the work, the annual dollar value, the location by city and state, the current percentage of completion, the expected date for completion, and the name of an individual most familiar with the Bidder's work on these jobs; or (f) the name and address of the Bidder's banking institution, chief banking representative handling the Bidder's account, the Bidder's Federal Employer Identification Number (i.e., the number assigned to firms by the Federal Government for tax purposes), the Bidder's Dun and Bradstreet number, if any, the name of any other credit service to which the Bidder has furnished information, and the number, if any, assigned by such service to the Bidder's account.

30. FEDERAL REQUIREMENTS The attached cited agency clauses shall be incorporated herein. In the event of conflict, the Agency clauses shall take precedence.

¹ Individuals who are rebuttably presumed to be socially and economically disadvantaged include women, Blacks,

Hispanics, Native Americans, Asian-Pacific Americans, and Asian-Indian Americans. A bidder may meet the DBE goal by using any combination of disadvantaged businesses.

ATTACHMENT A
FEDERAL TRANSIT ADMINISTRATION CONTRACT PROVISIONS
FOR GRANTS BEFORE DECEMBER 26, 2014

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1. DEFINITIONS

“Agreement” shall mean “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” shall mean 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” shall have the same meanings as “Consultant” and “Subconsultant,” respectively.

“Micro-Purchase” shall mean 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” shall mean the Port Authority Trans-Hudson Corporation.

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

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

2. 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.

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3. 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.

4. 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.

5. ORGANIZATIONAL CONFLICT OF INTEREST

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

- 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 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 an Authority prime contractor or first-tier subcontractor at no cost to the Authority; determining the Contractor ineligible to compete for or be awarded any subsequent or “follow-on” contracts that may be based upon the Contractor’s actions under this Contract or violations of this numbered clause, or terminating this Contract, in whole or in part.

6. LOBBYING

This section applies to Construction/architectural and engineering/acquisition of rolling stock/professional service contracts/operational service contracts/turnkey contracts; and does not apply to Micro-Purchases

Byrd Anti-Lobbying Amendment, 31 USC 1352 as amended by the Lobbying Disclosure Act of 1995 —“Byrd Anti-Lobbying Amendment” (31 U.S.C. 1352) — Contractors who apply or bid for an award of \$100,000 or more shall file the certification required by 49 CFR Part 20, “New Restrictions on Lobbying.”. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the Recipient.

7. 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, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable federal implementing regulations and other implementing requirements FTA may issue.

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

- 1.) Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 *et seq.*, (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect

Construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

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

3.) Disabilities - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

The Contractor shall be responsible for ensuring that lower tier contractors and subcontractors and subagreements are in compliance with these requirements.

8. 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).

If this Contract involves equipment, materials, or commodities that may be transported by ocean vessels, the Contractor herein agrees:

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.

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 FTA Administrator and grantee (through the contractor in the case of subcontractor bills-of-lading) and to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20230.

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.

9. 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.

- (a) 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 delineated above) over \$2,000.

(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.

(B) 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.

(C) 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 is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the Port Authority, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the sponsoring government agency (or the applicant, sponsor, or owner).

(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).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

10. 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.

i. 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.

ii. 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.

iii. 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.

iv. 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.

11. 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 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.

12. SEISMIC SAFETY

Applies only to the Construction of new buildings or additions to existing buildings. These requirements do not apply to Micro-Purchases except for Construction contracts over \$2,000).

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.

13. 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 to 7815 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.

14. CLEAN WATER REQUIREMENTS

This section applies to each contract and subcontract which exceeds \$150,000.

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 \$150,000, the Contractor agrees to comply with all applicable standards, orders and regulations issued pursuant to 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 \$150,000 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. CLEAN AIR REQUIREMENTS

This section applies to all contracts over \$150,000, including indefinite quantities where the amount is expected to exceed \$150,000 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 \$150,000 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.

16. 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 (\$3,000 or less, except for Construction contracts over \$2,000).

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.

17. 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. 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.

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, it may make, or causes to be made, pertaining to the Contract or project. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.

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.

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

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.

(i) 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

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

21. BUY AMERICA

This section applies to Construction Contracts and Acquisition of Goods or Rolling Stock (valued at more than \$150,000).

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 FTA Recipient 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. TERMINATION FOR CAUSE OR CONVENIENCE

Notwithstanding anything to the contrary elsewhere within this Contract, the 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 as set forth in the “Standard Contract Terms and Conditions,” Part II, Section 14. In the event of termination for convenience, the Contractor shall be paid its costs as so provided for in the Contract, on work performed up to the time of termination for convenience. See the “Standard Contract Terms and Conditions,” Part II, Section 14(II)(2).

23. 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.

24. 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 with implementing U.S. DOL regulations, “Labor Standards Provisions Applicable to 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.

25. GOVERNMENT-WIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

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 it enters into.

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 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 covered transactions.

26. 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 Contract Documents. The FTA does not require the inclusion of these requirements in subcontracts.

CERTIFICATION REGARDING LOBBYING PURSUANT TO 31 U.S.C. 1352
(TO BE SUBMITTED WITH EACH BID OR OFFER EXCEEDING \$150,000)

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)(I)-(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

<p>1. Type of Federal Action: <input type="checkbox"/> a. contract <input type="checkbox"/> b. grant <input type="checkbox"/> c. cooperative agreement <input type="checkbox"/> d. loan <input type="checkbox"/> e. loan guarantee <input type="checkbox"/> f. loan insurance</p>	<p>2. Status of Federal Action: <input type="checkbox"/> a. bid/offer/application <input type="checkbox"/> b. initial award <input type="checkbox"/> c. post award</p>	<p>3. Report Type: <input type="checkbox"/> a. initial filing <input type="checkbox"/> b. material change For material change only: Year _____ quarter _____ Date of last report _____</p>
<p>4. Name and Address of Reporting Entity: <input type="checkbox"/> Prime <input type="checkbox"/> Subawardee Tier _____, if known: Congressional District, if known:</p>	<p>5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime: Congressional District, if known:</p>	
<p>6. Federal Department/Agency:</p>	<p>7. Federal Program Name/Description: CFDA Number, if applicable: _____</p>	
<p>8. Federal Action Number, if known:</p>	<p>9. Award Amount, if known: \$ _____</p>	
<p>10. a. Name and Address of Lobbying Registrant (if individual, last name, first name, MI):</p>	<p>b. Individuals Performing Services (including address if different from No. 10a) (last name, first name, MI):</p>	
<p>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.</p>	<p style="text-align: right;">_____ Print</p> <p>Name: _____</p> <p>Title: _____</p> <p>Telephone No.: _____ Date: _____</p>	
<p>Federal Use Only</p>	<p>Authorized for Local Reproduction Standard Form - LLL (Rev. 7-97)</p>	

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). Included 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

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: 0%

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 – <http://www.njucp.net/>

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 Certifying Partner ("NJUCP") that it meets the requirements to be a DBE under USDOT regulations set forth in 49 C.F.R. Part26.
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 HongKong;
 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

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 trucking needs with the Contractor; and (4) scheduling and dispatching trucks.
 - 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 submission 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. 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.

ACKNOWLEDGMENT BY NOTARY PUBLIC

APPENDIX A1 – DBE GOALS STATEMENT (reverse)

STATE OF _____)
)ss:
COUNTY OF _____)

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

Name of Notary (print) _____

(Affix Notary Stamp Here)

My Commission Expires _____

(Notary Signature)

(Date)

THE PORT AUTHORITY OF NY & NJ

OFFICE OF BUSINESS DIVERSITY AND CIVIL RIGHTS

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

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

CONTRACT NUMBER AND TITLE: _____

BIDDER:

Name of Firm: _____
Address: _____ Telephone: _____
Email Address: _____

DBE:

Name of Firm: _____
Address: _____ Telephone: _____
Description of work to be performed by DBE: _____
Calculation (supply only): _____

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

AFFIRMATION of DBE

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

By: _____ Date: _____
Signature of Principal or Officer of DBE - Print Name and Title

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

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

Signature of Bidder _____ Title _____ Date _____

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

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

ACKNOWLEDGMENT BY NOTARY PUBLIC

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

STATE OF _____)

S.S.:

COUNTY OF _____)

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

Name of Notary (print) _____

(Affix Notary Stamp Here)

My Commission Expires _____

(Notary Signature)

(Date)

ACKNOWLEDGEMENT BY NOTARY PUBLIC

APPENDIX A4

INFORMATION ON SOLICITED FIRMS (reverse)

STATE OF _____)

S.S.:

COUNTY OF _____)

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

Name of Notary (print) _____

(Affix Notary Stamp Here)

My Commission Expires _____

(Notary Signature)

(Date)

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

INSTRUCTIONS:

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

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

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

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

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

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

PRE-AWARD DBE TRUCKING COMMITMENT INFORMATION

DATE: _____ CONTRACTOR NAME: _____

CONTRACT NUMBER: _____ TELEPHONE: _____

NAME OF DBE TRUCKING FIRM: _____

SCOPE OF WORK OF TRUCKING FIRM: _____

SUPERVISOR OF THE DAY-TO-DAY DBE TRUCKING OPERATION: _____

NUMBER OF TRUCKS _____ + _____ = _____
OWNED LEASED TOTAL

NUMBER OF TRUCKS _____
PERFORMING WORK _____

_____ X _____ = _____
RATE PER DURATION/NUMBER COMMITMENT

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

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

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

SIGNATURE OF PRINCIPAL OR OFFICER OF TRUCKING FIRM: _____

PRINT NAME: _____ TITLE: _____

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

Signature _____ Title _____ Date _____

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

APPENDIX A6: DBE REGULAR DEALER VERIFICATION FORM

PA 3750A / 06-16

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

Project Number:	Telephone # of Prime
Prime Contractor:	
DBE Firm:	
Provide a brief description of the material(s) your firm will be supplying and the Prime is requesting be credited as a regular dealer (including item numbers and estimated quantities when possible).	
If either question is marked 'No', then the Prime cannot receive regular dealer credit for the services provided by the DBE firm. Instead, the maximum credit that could be received would be the fee or commission the DBE firm receives for its services. Before executing this form, read the attached 'Guide for Counting DBE Suppliers' which includes the official question and answer issued by the United States Department of Transportation.	
	Yes No
1. Does your firm "regularly" engage in the purchase and sale or lease, to the general public in the usual course of its business, of product(s) of the general character which will be involved in this contract and for which DBE credit is being sought?	
2. Is the role your firm will play on this specific contract consistent with the regular sale or lease of the product(s) in question, as distinct from a role better understood as that of a broker, packager, manufacturer's representative, or other person who arranges or expedites a transaction?	
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.	

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 expediting 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.