

October 30, 2013

SUBJECT: REQUEST FOR PROPOSALS FOR PERFORMANCE OF EXPERT PROFESSIONAL INTEGRITY MONITORING SERVICES FOR THE GOETHALS BRIDGE MODERNIZATION PROGRAM AS REQUESTED ON AN “AS-NEEDED” BASIS DURING 2014 – 2019 (RFP #35400)

Dear Sir or Madam:

The Port Authority of New York and New Jersey, (the “Authority”) is seeking Proposals in response to this Request for Proposals (RFP) for a Consultant to provide expert professional integrity monitoring services for the Goethals Bridge Modernization Program Replacement Project (“Project”) as requested on an as-needed basis during 2014-2019, as more fully set forth in Attachment A, attached hereto and made a part hereof.

Attached hereto is also a copy of the Authority’s Standard Agreement (“Agreement”). It should be carefully reviewed by you as it is the form of agreement the Authority intends that you sign in the event of acceptance of your Proposal, and that forms the basis for the submission of proposals. You should therefore not make any changes in this Agreement, nor restate any of its provisions in your Proposal or supporting material. The scope of the tasks for performance of said services may include but are not limited to those set forth in Attachment A to the Agreement, included herewith and made a part hereof.

Upon completion of the solicitation process, the Authority may elect to enter into an Agreement for performance of the subject services with one or more firms, as it deems necessary and appropriate.

I. PROPOSER REQUIREMENTS

The Authority will only consider Proposals from those firms demonstrating compliance with the following prerequisites:

- A. The Proposer shall have had a minimum of five (5) years of experience in the performance of integrity monitoring services; and
- B. The Proposer shall have at least two (2) years experience performing integrity monitoring services on a minimum of two (2) construction projects, each with a construction value in excess of \$10 million.

A Proposer which is a joint venture, Limited Liability Company or other business form consisting of several entities, may collectively or individually satisfy the forgoing requirements.

Satisfaction of the foregoing requirements does not assure that the Proposer will be selected for performance of the subject services. Firms that do not meet these requirements shall not be considered further for performance of the subject services.

II. PROPOSAL FORMAT REQUIREMENTS:

To respond to this RFP, the proposers shall submit a concise Proposal complying with the following basic format requirements:

- A. To be acceptable, proposals shall be of no more than twenty (20) pages single-sided using 12 point or greater font size. The page limit pertains only to items E, F, and G of Section III, below. Each resume submitted pursuant to Section III D, below, shall be two-pages maximum, single-sided using 12 point or greater font size. The Proposal pages shall be numbered and bound, or in a 3-ring binder, with “Your Firm Name” and **RFP Number 35400** clearly indicated on the cover.
- B. Separate each section of the Proposal with a tab divider labeled in accordance with the Submission Requirements (Section III) below.
- C. All Proposals must be delivered in sealed envelopes and/or packages addressed to: The Port Authority of New York and New Jersey, 2 Montgomery Street, 3rd Floor, Jersey City, NJ 07302, **Attention: RFP Custodian**. Do not address your Proposal to any other name. You are required to submit one (1) reproducible original and five (5) copies, along with six (6) compact disc copies, of your Proposal for review. In case of conflict, the reproducible original of the Proposal shall take precedence over material on the compact disc.
- D. In each submission to the Authority, including any: return address label, information on the surface of the compact disc, and information on the reproducible original and copies of the proposal, the Proposer shall use its **FULL LEGAL NAME WITHOUT ABBREVIATIONS**. Failure to comply with requirement may lead to delays in contract awards and contract payments, which shall be the responsibility of the Proposer.
- E. Your Proposals should be received in sufficient time so that the Authority receives them **no later than 2:00 p.m. on November 26, 2013**. The outermost cover of your submittal must include the RFP Number (as stated above) and the RFP title. The Authority assumes no responsibility for delays caused by any delivery services.
- F. If your Proposal is to be hand-delivered, please note that only individuals with proper identification (e.g., photo identification) will be permitted access to the Authority’s offices. Individuals without proper identification will be turned away and their packages not accepted.

III. SUBMISSION REQUIREMENTS:

To respond to this RFP, the Proposer shall provide the following information:

A. Agreement on Terms of Discussion

In the front of your Proposal, a copy of Attachment B (Agreement on Terms of Discussion), signed by a duly authorized officer of your firm. If the Proposer is a joint venture, an authorized representative of each party shall sign the Agreement.

B. Transmittal Letter

Submit a transmittal letter on Proposer’s letterhead, signed by an authorized representative of the Proposer, demonstrating compliance with the “Proposer Requirements” stipulated in Section I above. Completed copies of Attachment D-1

(Proposer Requirements, Section I, item A) and Attachment D-2 (Proposer Requirements Section I, Item B) shall supplement additional information, if any, provided in the transmittal letter.

If proposing as a joint venture, your transmittal letter shall also include the following:

1. A statement indicating whether the Consultant is proposing as a single entity, or as a joint venture.

All the qualification information required for a single entity shall be submitted for *each* participant in the joint venture. If a common law joint venture submits a Proposal, all participants in the joint venture shall be bound jointly and severally, and *each* participant shall execute the Proposal. Documents signed by a common law joint venture, in connection with this Proposal, shall include the names of all participants of the joint venture followed by the words “acting jointly and severally”. If a joint venture is deemed qualified to receive an invitation to deliver a formal presentation of how it proposes to provide the services outlined herein, the joint venture shall be composed of the same participants as were in the joint venture when it submitted the Proposal. No substitution of participants will be allowed without the express prior written permission of the Authority.

2. Submit a copy of any written agreement, or understanding, which exists between each party to the joint venture as part of the Proposal. If no written agreement or understanding exists, the Lead Proposer shall be identified and the joint venture shall include in its Proposal a written statement explaining how the joint venture will fulfill the requirements of the Agreement. Such explanation shall fully discuss and identify the responsibility of each party to the joint venture for performing the Work, and for providing the required insurance.

NOTE: A common law joint venture is one whereby two or more companies join together for the purposes of submitting a proposal and performing the services required under the Agreement; a “partnership” of two separate entities for the purpose of performing the required services. A legal entity joint venture is a joint venture company whereby the joint venture members have created a new legal entity, usually a corporation in which the joint venture members own all the stock.

If the joint venture is a distinct legal entity the name of the joint venture Proposer shall appear on the original proposal and wherever else the Proposer’s name would appear pursuant to this Agreement.

If the Proposer is a common law joint venture, the names of all participants shall be listed followed by the words “acting jointly and severally”.

C. A complete copy of Attachment C (Company Profile).

D. Staff Qualifications and Experience

The qualifications and experience of the Project Integrity Monitor team shall demonstrate sophisticated legal, forensic auditing, investigative, and loss prevention skills with particular expertise in the investigation and prosecution of construction and labor fraud schemes. The team shall also include individuals with expertise in construction management and engineering.

1. Provide the name(s) and title(s) of personnel and/or subconsultant(s) who will be responsible for the performance of the requested services in addition to providing resumes for each, clearly indicating their relevant experience and specific areas of expertise. This shall include, but not be limited to, investigators, accountants, auditors, engineers, reviewers and various trade or professional titles. Each resume, limited to two (2) pages, shall include their education, professional credentials and employment histories. The resumes should clearly identify the years of experience in the field related to the tasks for which the individual will be responsible. Also, include the resumes of subconsultants that will be involved in the provision of services required under this Agreement.
2. Identify the role(s) and responsibilities of each individual proposed as they relate to the performance of projects included in Section E. (Firm Qualifications and Experience).

If proposing the use of subconsultant(s), provide the terms and conditions for their compensation (including their billing rates as appropriate), their Minority/Women-owned Business Enterprise (M/WBE) status and the technical qualifications of their key personnel to be assigned to the subject project.

E. Firm Qualifications and Experience

Provide your firm's (including subconsultants) qualifications and experience. Include projects similar in size and scope to that contemplated in Attachment A, and as otherwise required, by you, to supplement information previously provided in response to the prerequisites above. It is desired that firms demonstrate their experience, if any, working on Public Private Partnership (P3) projects.

1. Identify your firm's size, capabilities and specific relevant experience in the performance of services similar to those contemplated herein. For all projects referenced, include the name of the client, the date services were provided, the nature of the services performed, the name of a contact person and current telephone number for verification purposes.
2. Submit at least three references, including affiliation, name, position and contact information. These references shall illustrate successful completion of projects in the capacity of an Integrity Monitor for at least two (2) projects of scope and nature similar to this project within the past five years in a major U.S. City.

F. Technical Approach

Provide a detailed description of the proposed technical approach to be taken in performance of the required services for each task in Attachment A. Demonstrate in detail the technical adequacy and feasibility of the approaches, audit and analytical techniques, methods and/or models proposed for the successful performance of the required tasks, including the development and implementation of corruption prevention programs. Discuss proposed strategies to utilize subconsultants to perform any of the required services. Include a detailed statement indicating that the firm has the capacity to take on this additional work and that the proposed staff have the availability to perform this assignment if your firm is selected.

G. Management Approach

Provide a detailed description of the proposed management approach to be taken to performance of the required services. Factors addressed in your management approach shall include, but are not limited to, your proposed: organizational structure to be responsive to the Authority's needs; approach and schedule for keeping the client apprised of the project status; approach to ensuring the quality and timeliness of the work products, as well as the practices and procedures your firm follows to control project costs.

H. M/WBE Participation

Your attention is directed to paragraph 20 of the Authority's Standard Agreement in which the Director has stated the goals for Minority/Women Business Enterprise participation in this project. Submit details on how you intend to meet these goals.

Provide your Minority/Women Business Enterprises ("M/WBE") Participation Plan, in accordance with the M/WBE Subconsulting Provisions hereunder. Proposers are directed to use form PA3749B as the recording mechanism for the M/WBE Participation Plan. This form may be downloaded at <http://www.panynj.gov/business-opportunities/become-vendor.html>.

I. Pricing and Compensation Proposal

The Proposer shall complete and submit the Proposer's Pricing and Compensation Proposal forms ([Attachment E in Excel](#)) in accordance with Attachment A. The cost proposal shall be submitted in a separate, sealed package clearly labeled "PRICING AND COMPENSATION PROPOSAL" and shall include the following for the initial six (6) year period commencing in 2014 and one, one (1) year option period:

1. The Consultant's fully loaded (All-Inclusive) Hourly Rates in accordance with Section 8.A of the Standard Agreement.
2. Cost of Subconsultants, in accordance with Section 8.B of the Standard Agreement.
3. Reimbursable Expenses, in accordance with Section 8.C of the Standard Agreement.
4. A staffing analysis for performance of Tasks outlined in Attachment A, inclusive of the Consultant's and subconsultants' staff. The staffing analysis shall identify the names, titles, and billing rates of specific staff, including principals and partners, to be assigned to the performance of each task, including an itemized estimate of anticipated out-of-pocket expenses for all tasks, by task. Please note that out-of-pocket expenses shall not include daily commutation or housing costs or any relocation costs that may be incurred by your staff in the performance of services under this Agreement. Typical job titles may include, but are not limited to:
 - a. Principal
 - b. Project Manager
 - c. Legal (e.g. Attorney, Paralegal)
 - d. Auditor (Forensic)
 - e. Investigator
 - f. Engineer

However, for completing the Proposer's Pricing and Compensation Proposal forms (Attachment E), each staff member, regardless of their internal title, MUST be put into one of the categories listed above.

5. Provide the percentage (%) of total estimated construction cost you anticipate receiving as compensation for completion of the contemplated services (as provided in Attachment A, Section I., Background. One percentage amount should be provided for the entire Project scope.
6. Provide a written narrative of any assumptions and other information that forms the basis of the proposed price.
7. If your firm has been recently audited by the Federal government or the states of New York or New Jersey, provide documentation of rates negotiated and accepted with a breakdown of overhead components included.
8. Cost proposals shall include:
 - a. the hourly billing rates (as required in Attachment E (see I. first paragraph, above));
 - b. the actual hourly pay rates of all individuals identified in Attachment E; and
 - c. a breakdown of overhead factors (vacation, holiday, sick pay, workers' compensation, office rent, insurance, and profit).

J. Affiliates

Include a complete list of your firm's affiliates, and their involvement in the performance of services contemplated hereunder. Affiliates shall be as defined in paragraph 31 of the attached Standard Agreement.

K. Conflict of Interest

If you or any of your employees, agents or subcontractors/consultants has, may have, or may give the appearance of a possible conflict of interest, include in your Proposal a statement indicating the nature of the conflict. The Port Authority reserves the right to disqualify the Proposer if, in its sole discretion, any interest disclosed or discovered from any source could create, or give the appearance of, a conflict of interest. The Authority's determination regarding any question(s) of conflict of interest will be final.

L. Agreement Exceptions

You are expected to agree with the form of agreement and its terms and conditions. Make no changes to the Standard Agreement and do not restate any of its provisions in your Proposal or supporting material. ***However, if you have any specific exceptions, such exceptions should be set forth in a separate letter included with your response to this RFP.*** The Authority is under no obligation to entertain or accept any such specific exceptions. Failure to raise issues at the time of Proposal submission shall preclude the raising of such issues at a later time.

M. Background Qualifications Questionnaire

The Proposer shall submit a completed Background Qualifications Questionnaire (BQQ), required for all consultants, subconsultants, contractors and vendors for performance of

the contemplated services hereby. This document and instructions for submitting the completed BQQ to the Authority's Office of Inspector General can be obtained at the Authority's website through the following link: <http://www.panynj.gov/inspector-general/inspector-general-programs.html>.

A BQQ is also to be submitted for any subcontractor, subconsultant or vendor known to the Proposer at the time of Proposal submission.

IV. FINANCIAL INFORMATION

The Proposer shall be required to demonstrate that it is financially capable of performing the required services as outlined in Attachment A. The determination of the Proposer's financial qualifications and ability to perform the services will be in the sole discretion of the Authority. The Proposer shall submit, with its Proposal, the following:

- A. Certified financial statements, including applicable notes, reflecting the Proposer's assets, liabilities, net worth, revenues, expenses, profit or loss and cash flow for the Proposer's for the most recent fiscal year.
- B. Where the certified financial statements in paragraph A above are not available, then reviewed statements from an independent accountant setting forth the aforementioned information shall be provided.
- C. Where the statements submitted pursuant to paragraphs A and B above do not cover a period which includes a date not more than forty-five (45) days prior to the Proposal Due Date, then the Proposer shall also submit a statement in writing, signed by an executive officer or his/her designee, that the present financial condition of the Proposer is at least as good as that shown on the statements submitted.
- D. Where Proposer cannot submit the information as set forth in Paragraphs A, B, and C above, the Proposer shall submit a letter explaining why the information cannot be submitted and include alternative means for demonstrating financial capability.
- E. A statement of work which the Proposer has on hand, including any work on which a bid and/or proposal 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 of completion, and the name of an individual most familiar with the Proposer's work on these projects.

V. PRE-PROPOSAL MEETING

A Pre-Proposal Meeting is scheduled on Friday, November 15, 2013 at 10:00 AM, 2 Montgomery Street, 3rd Floor – Conference Room D, Jersey City, NJ 07302. Two forms of valid photo ID will be required to enter the building.

Any questions concerning this RFP should be submitted in writing prior to the meeting so that the Port Authority may prepare responses in advance of the meeting. Additional questions may be permitted at the meeting; however, responses may be deferred and provided at a later date by written addenda.

Attendance is strongly recommended. Information conveyed may be useful to Proposers in preparing their proposals and Proposers not attending assume all risks which may ensue from non-attendance.

Attendees interested in attending should RSVP to Isabel Amado, Procurement Solicitation Manager at: iamado@panynj.gov no later than 3:00 PM (EST) of the business day preceding the scheduled date to confirm their attendance and/or receive traveling directions.

VI. ORAL PRESENTATIONS

After review of all Proposal submissions, an oral presentation to the selection committee and others, as appropriate, may be requested. Firms selected to make presentations may be given only short advance notice. The presentation should be limited to 30 minutes and should include the material contained in your Proposal. The presentation will be followed by an approximately 30-minute question and answer session. Your staff providing the presentation shall be led by the proposed Project Manager, who may be supported by no more than three (3) other senior staff members who are proposed to work on this project. Notification of presentation scheduling will be made via e-mail. **Provide the name and e-mail address of the person who should be contacted for presentation scheduling**, if applicable, as well as an alternate in the event that person is unavailable.

VII. SELECTION PROCESS

The qualifications based selection process shall take into consideration the technical qualifications presented below in order of importance, and subsequently cost, as appropriate. After consideration of these factors the Authority may enter into negotiations with the firm (or firms) deemed best qualified to perform the required services. Such negotiations shall be conducted between the Authority and the individual contact-person identified by your firm.

- A. Qualifications and experience of the staff, including subconsultant staff;
- B. Qualifications and experience of the firm;
- C. Technical Approach; and
- D. Management Approach

VIII. ADDITIONAL INFORMATION

If your firm is selected for performance of the subject services, the agreement you will be asked to sign, at that time, will include clauses entitled “Certification of No Investigation (Criminal Or Civil Anti-Trust), Indictment, Conviction, Debarment, Suspension, Disqualification and Disclosure Of Other Information” And “Non-Collusive Proposing, And Code Of Ethics Certification, Certification Of No Solicitation Based On Commission, Percentage, Brokerage, Contingent Or Other Fees.” By submitting a Proposal the Consultant shall be deemed to have made the certifications contained therein unless said Consultant submits a statement with its Proposal explaining why any such certification(s) cannot be made. Such a submission shall be submitted in a separate envelope along with your Proposal, clearly marked “CERTIFICATION STATEMENT”.

It is Authority policy that its contractors and vendors comply with the legal requirements of the States of New York and New Jersey. Your attention is therefore called to New York

State's requirements that certain contractors, affiliates, subcontractors and subcontractors' affiliates register with the New York State Department of Taxation and Finance for the purpose of collection and remittance of sales and use taxes. Similarly, New Jersey requires business organizations to obtain appropriate Business Registration Certificates from the Division of Revenue and Enterprise Services of the State's Department of the Treasury.

Proposers are advised that additional vendor information, including, but not limited to forms, documents and other related information, may be found on the Authority website at www.panynj.gov.

Should you have any questions, please e-mail them to Isabel Amado, Procurement Solicitation Manager at iamado@panynj.gov. All questions must be received at least five (5) working days prior to the proposal due date. Neither Ms. Amado nor any other employee of the Authority is authorized to interpret the provisions of this RFP or accompanying documents or give additional information as to their requirements. If interpretation or additional information is required, it will be communicated by written addendum issued by the undersigned and such writing shall form a part of this RFP, or the accompanying documents, as appropriate. Addenda to the RFP, if any, will be posted at <http://www.panynj.gov/business-opportunities/bid-proposal-advertisements.html?tabnum=6>. You should therefore monitor the advertisement on said website, as appropriate, to ensure you are aware of changes, if any.

Proposal preparation costs are not reimbursable by the Authority. The Authority shall have no obligation to a firm except under a duly authorized agreement executed by the Authority.

The Authority reserves the unqualified right, in its sole and absolute discretion, to reject all Proposals, to undertake discussions and modifications with one or more Consultants and to proceed with that Proposal or modified Proposal, if any, which in its judgment will, under all the circumstances, best serve the public interest.

Sincerely,

Tim Volonakis
Assistant Director
Procurement Department

Attachments

ATTACHMENT A

PERFORMANCE OF EXPERT PROFESSIONAL INTEGRITY MONITORING SERVICES FOR THE GOETHALS BRIDGE MODERNIZATION PROGRAM AS REQUESTED ON AN “AS-NEEDED” BASIS DURING 2014 – 2019

I. BACKGROUND

The Port Authority of New York and New Jersey (the “Authority”) is a municipal corporate instrumentality and political subdivision of the States of New York and New Jersey, created and existing by virtue of the Compact of April 30, 1921, made by and between the two States, and thereafter consented to by the Congress of the United States. It is charged with providing transportation, terminal and other facilities of trade and commerce within the Port District. The Port District comprises an area of about 1,500 square miles in both States, centering about New York Harbor. The Port District includes the Cities of New York and Yonkers in New York State, and the cities of Newark, Jersey City, Bayonne, Hoboken and Elizabeth in the State of New Jersey, and over 200 other municipalities, including all or part of seventeen counties, in the two States. The Authority manages and/or operates all of the region’s major commercial airports (Newark Liberty International (EWR), John F. Kennedy International (JFK), Teterboro (TEB), LaGuardia (LGA) and Stewart International Airports (SWF)); marine terminals in both New Jersey and New York (Port Newark and Elizabeth, Howland Hook and Brooklyn Piers); and its interstate tunnels and bridges (the Lincoln and Holland Tunnels; the George Washington, Bayonne, and Goethals Bridges; and the Outerbridge Crossing), which are vital “Gateways to the Nation.”

The Authority’s facilities also include its wholly owned subsidiaries, such as but not limited to The Port Authority Trans-Hudson Corporation (PATH), a heavy-rail rapid transit system, operating 24 hours a day, seven days a week, serving as a critical link in the New York-New Jersey transportation network.

Constructed in 1928, the Goethals Bridge is now approaching functional obsolescence, and is in need of replacement. The Goethals Bridge Modernization Program, includes the Bridge Replacement Project (the “Project”), which will proceed as a public-private partnership between the selected Project Developer and the Authority.

The hard construction cost for the Project is estimated at approximately \$825,000,000.

The Authority will appoint a Project Integrity Monitor (“Monitor” or “IM”) to assist with the oversight of this important project, as required to ensure performance of the highest ethical standards, free from unethical, improper, and illegal conduct. The IM shall report to the Authority’s Office of Inspector General (OIG).

II. SCOPE OF WORK

The services of the Consultant/IM shall generally consist of performing integrity monitoring services for the Project, to include but not be limited to: creating, implementing and monitoring policies and procedures to ensure that the entities engaged in the Project comply with relevant laws and regulations; as well as, preventing/deterring, uncovering and reporting unethical and illegal conduct for a term of six (6) calendar years, from 2014 through 2019.

The term of the Agreement may be extended, at the sole discretion of the Authority, for up to one (1) additional year (2020).

The Consultant shall work with the Authority's OIG in designing an appropriate Integrity Monitoring Program for the Project as needed, and work cooperatively with the Project's Developer and numerous construction contractors as required.

III. DESCRIPTION OF TASKS

In performance of the following tasks, the Consultant shall, as directed by the OIG, (1) prepare, present or assist in the presentation of draft and final reports documenting findings and detailing the results of audits, reviews, investigations and other assigned tasks; (2) incorporate Authority comments, as appropriate, and resubmit as final; and (3) meet with law enforcement officials, as appropriate, or as otherwise required.

TASK A: PROCEDURE AND PROCESS REVIEW

Conduct a review of all existing procedures and processes for identifying and eliminating fraud, corruption, and cost abuse risks. This shall include but not be limited to, the following:

1. Obtaining information (such as, names of entity and its key persons and role or service being performed, etc.) on all entities performing work on the Project.
2. Reviewing and analyzing the risks inherent in all pre-construction, construction, and post-construction procedures, including but not limited to:
 - a. invoice and payment application procedures between the Developer and its contractors;
 - b. change-order processing, including compensation and delay events;
 - c. bond and insurance payments applicable to this Project; and,
 - d. compliance programs, etc.
3. Reviewing all contracts, union, and trade agreements, as required to understand them and to ensure the appropriate entities are compliant with all applicable laws, regulations, codes, programs, contractual requirements, etc.

TASK B: DESIGN AND IMPLEMENT MITIGATION CONTROLS

Working with the OIG, the Tunnels, Bridges and Terminals Department staff and other Authority department staff, as required, design and implement controls to mitigate the risks identified in the performance of Task A.

TASKC: RECORDS REVIEW AND COMPLIANCE

Review the general contractor's records, with specific attention to documentation and records applicable to this Project, including but not limited to:

1. subcontractor agreements;
2. invoice and payment applications;
3. change-orders, including compensation and delay events;

4. bond and insurance payments; and
5. insurance certifications.

TASK D: FORENSIC REVIEW AND OVERSIGHT

Conduct forensic reviews of the Project's project/program costs, and report findings to the Authority, as required. The Consultant's review shall include but not be limited to:

1. analysis of requisitions and supporting documentation;
2. change-orders, including compensation and delay events;
3. change-order requisitions and supporting documentation;
4. payments to vendors;
5. equipment invoices;
6. bond payment reconciliation;
7. certified payroll reports;
8. site logs; and
9. trucking manifests; etc.

This work shall be performed in coordination with the Authority's Audit Department.

TASK E: INVESTIGATIONS AND OVERSIGHT

Provide forensic auditing and investigative services, as-needed, and as directed by the OIG, which shall include, but not be limited to:

1. conducting all required background investigations on contractors, suppliers, and consultants;
2. conducting in-field investigations and on-site monitoring of construction work;
3. investigating and evaluating construction contractor use of labor, compliance with collective bargaining agreements, and compliance with state and federal labor laws;
4. reviewing and monitoring of worker safety and environmental plans and procedures for integrity-related concerns and issues;
5. reviewing contractor/consultant compliance with M/WBE requirements and goals;
6. reviewing compliance with Buy America requirements; and
7. conducting investigations into illegal conduct by any entity involved in the Project.

IV. CONDITIONS AND PRECAUTIONS

The Consultant shall immediately inform the Authority of any unsafe condition discovered at any time during the course of this work.

Vehicular traffic and Project work shall always have priority over any and all of the Consultant's operations.

ATTACHMENT B

**REQUEST FOR PROPOSALS FOR PERFORMANCE OF EXPERT PROFESSIONAL
INTEGRITY MONITORING SERVICES FOR THE GOETHALS BRIDGE
MODERNIZATION PROGRAM ON AN AS-NEEDED BASIS DURING 2014 – 2019
(RFP #35400)**

AGREEMENT ON TERMS OF DISCUSSION

The Port Authority’s receipt or discussion of any information (including information contained in any proposal, vendor qualification, ideas, models, drawings, or other material communicated or exhibited by us or on our behalf) shall not impose any obligations whatsoever on the Port Authority or entitle us to any compensation therefor (except to the extent specifically provided in such written agreement, if any, as may be entered into between the Port Authority and us). Any such information given to the Port Authority before, with or after this Agreement on Terms of Discussion (“Agreement”), either orally or in writing, is not given in confidence. Such information may be used, or disclosed to others, for any purpose at any time without obligation or compensation and without liability of any kind whatsoever. Any statement which is inconsistent with this Agreement, whether made as part of or in connection with this Agreement, shall be void and of no effect. This Agreement is not intended, however, to grant to the Port Authority rights to any matter, which is the subject of valid existing or potential letters patent. The foregoing applies to any information, whether or not given at the invitation of the Authority.

Notwithstanding the above, and without assuming any legal obligation, the Port Authority will employ reasonable efforts, subject to the provisions of the Port Authority Freedom of Information Code and Procedure adopted by the Port Authority’s Board of Commissioners on March 29, 2012, which may be found on the Port Authority website at: <http://www.panynj.gov/corporate-information/pdf/foi-code.pdf>, not to disclose to any competitor of the undersigned, information submitted which are trade secrets or is maintained for the regulation or supervision of commercial enterprise which, if disclosed, would cause injury to the competitive position of the enterprise, and which information is identified by the Proposer as proprietary, as more fully set forth in the FOI Code, which may be disclosed by the undersigned to the Port Authority as part of or in connection with the submission of a proposal.

(Company)

(Signature)

(Title)

(Date)

ORIGINAL AND PHOTOCOPIES OF THIS PAGE ONLY. DO NOT RETYPE.

ATTACHMENT C

COMPANY PROFILE

REQUEST FOR PROPOSALS FOR THE PERFORMANCE OF EXPERT PROFESSIONAL INTEGRITY MONITORING SERVICES FOR THE GOETHALS BRIDGE MODERNIZATION PROGRAM AS REQUESTED ON AN AS-NEEDED BASIS DURING 2014 – 2019 (RFP # 35400)

1. Company Name (print or type):

2. Business Address (to receive mail for this RFP):

3. Business Telephone Number: _____

4. Business Fax Number: _____

5. Firm website: _____

6. Federal Employer Identification Number (EIN): _____

7. Date (MM/DD/YYYY) Firm was Established: ____/____/____

8. Name, Address and EIN of Affiliates or Subsidiaries (use a separate sheet if necessary):

9. Officer or Principal of Firm and Title:

10. Name, telephone number, and email address of contact for questions:

11. Is your firm certified by the Authority as a Minority-owned, Woman-owned or Small Business Enterprise (M/W/SBE)? Yes No

If yes, please attach **Port Authority** certification as a part of this profile.

If your firm is an M/WBE not currently certified by the Authority, see the Authority's web site – <http://www.panynj.gov/business-opportunities/supplier-diversity.html>, to receive information and apply for certification.

ATTACHMENT D-1

COMPLIANCE WITH PROPOSER REQUIREMENTS

In response to the Proposer Requirements, stipulated in Section I, item A of the RFP letter, provide the following information as required to “demonstrate a minimum of five (5) years of experience in the performance of integrity monitoring services” (duplicate this form as required to provide the requested information):

Reference RFP Section I – Proposer Prerequisites
If Proposer is a common law joint venture, specify which entity’s experience is being cited below to satisfy Prerequisite A.

Service Provider:	
Client Name:	
Contract Start Date:	
Contract End Date:	
Brief description of the Scope of Work:	
Client contact name/title:	
Client contact email address:	
Client contact phone number:	
Contracting Entity:	

Service Provider:	
Client Name:	
Contract Start Date:	
Contract End Date:	
Brief description of the Scope of Work:	
Client contact name / title:	
Client contact email address:	
Client contact phone number:	
Contracting Entity:	

Service Provider:	
Client Name:	
Contract Start Date:	
Contract End Date:	
Brief description of the Scope of work:	
Client contact name / title:	
Client contact email address:	
Client contact phone number:	
Contracting Entity:	

Note – Client Contact must be employee of Company

ATTACHMENT D-2

COMPLIANCE WITH PROPOSER REQUIREMENTS

In response to the Proposer Requirements, stipulated in Section I, item B of the RFP letter, provide the following information as required to “demonstrate at least two (2) years experience performing integrity monitoring services on a minimum of two (2) construction projects, each with a construction value in excess of \$10 million” (duplicate this form as required to provide the requested information):

Service Provider:	
Client Name:	
Contract Start Date:	
Contract End Date:	
Brief description of the Scope of Work:	
Client contact name/title:	
Client contact email address:	
Client contact phone number:	
Contracting Entity:	

Service Provider:	
Client Name:	
Contract Start Date:	
Contract End Date:	
Brief description of the Scope of Work:	
Client contact name / title:	
Client contact email address:	
Client contact phone number:	
Contracting Entity:	

Service Provider:	
Client Name:	
Contract Start Date:	
Contract End Date:	
Brief description of the Scope of work:	
Client contact name / title:	
Client contact email address:	
Client contact phone number:	
Contracting Entity:	

Note – Client Contact must be employee of Company

P.A. Agreement # *-**-*****
DATE

FIRM
ADDRESS
CITY, ST, ZIP

Attention: NAME, TITLE

**SUBJECT: PERFORMANCE OF EXPERT PROFESSIONAL INTEGRITY
MONITORING SERVICES FOR THE GOETHALS BRIDGE
MODERNIZATION PROGRAM AS REQUESTED ON AN AS-NEEDED
BASIS DURING 2014-2019**

Dear NAME:

1. The Port Authority of New York and New Jersey (the "Authority") hereby offers to retain <FIRM> (the "Consultant" or "you") to provide expert professional Integrity Monitoring services as more fully set forth in Attachment A, which is attached hereto and made a part hereof, during 2014 - 2019. The term of the Agreement may be renewed at the sole discretion of the Authority for up to one (1) additional one (1)-year period. Said extension shall be sent by letter from the Director of Procurement at least thirty (30) days prior to the end of the current term.

The Authority does not guarantee the ordering of any services under this Agreement and specifically reserves the right, in its sole discretion, to use any person or firm to perform the type of services required hereunder.

2. This Agreement shall be signed by you and the Authority's Director of Procurement. As used herein "Director" shall mean the Authority's Director, Office of Investigations, Office of Inspector General, acting either personally or through his duly authorized representatives acting within the scope of the particular authority vested in them unless specifically stated to mean acting personally.

For the purpose of administering this Agreement, the Director has designated <NAME, TITLE>, to act as his duly authorized representative. The Project Manager for this project is <NAME>, at (***)**-***, or e-mail address *****@panynj.gov.

3. Your services shall be performed as expeditiously as possible and at the time or times required by the Director. Time is of the essence in the performance of all your services under this Agreement.

4. In response to a request for specific services hereunder and prior to the performance of any such services, you shall submit in writing to the Director for approval an estimated cost and staffing analysis of such services to the Authority. Approval of such cost and direction from the Director in writing to proceed shall effectuate the performance of services under this Agreement. After the point at which your expenditures for such services reaches such approved estimated cost, you shall not continue to render any such services unless you are specifically authorized in writing to so continue by the Director and you shall submit to him for approval a revised written

estimated cost of such services. If no such authorization is issued, the performance of the specifically requested services under this Agreement shall be terminated without further obligation by either of the parties as to services not yet performed, but you shall be compensated as hereinafter provided for services already completed. It is understood, however, that this limitation shall not be construed to entitle you to an amount equal to the approved estimated cost. Preparation of the cost estimate and staffing analysis mentioned in the first sentence of this paragraph shall not be a compensable service hereunder.

5. In order to effectuate the policy of the Authority, the services provided by the Consultant shall comply with all provisions of federal, state, municipal, local and departmental laws, ordinances, rules, regulations, and orders which would affect or control said services if the services were being performed for a private corporation, unless the Authority standard is more stringent, in which case the Authority standard shall be followed, or unless the Consultant shall receive a written notification to the contrary signed by the Director personally, in which case the requirements of said notification shall apply.

6. The Consultant shall meet and consult with Authority staff as requested by the Director in connection with the services to be performed herein. All items to be submitted or prepared by the Consultant hereunder shall be subject to the review of the Director. The Director may disapprove, if in his sole opinion said items are not in accordance with the requirements of this Agreement or professional standards or are impractical, uneconomical, or unsuited in any way for the purpose for which the contemplated services are intended. If any of the said items or any portion thereof are so disapproved, the Consultant shall forthwith revise them until they meet the approval of the Director, but the Consultant shall not be compensated under any provision of this Agreement for performance of such revisions. No approval or disapproval or omission to approve or disapprove, however, shall relieve the Consultant of his responsibility under this Agreement to furnish the requested services in accordance with an agreed upon schedule and in accordance with professional standards.

7. Total compensation for performance of all services as identified in Attachment A shall not exceed the amount of \$*****. The Consultant shall not continue to render services under this Agreement after the point at which the total amount to be paid to you hereunder including reimbursable expenses reaches the combined total of each of the approved estimated costs unless you are specifically authorized in writing to so continue by the Director. If no such authorization is issued, this Agreement shall be terminated without further obligation by either of the parties as to services not yet performed, but you shall be compensated as hereinafter provided for services already completed. It is understood, however, that this limitation shall not be construed to entitle you to the above amount as a minimum compensation.

8. As full compensation for all your services and obligations in connection with this Agreement, the Authority will pay you the total of the amounts computed under subparagraphs A, B, and C below, subject to the limits on compensation and provisions set forth in paragraphs 4 and 7 above. Subject to the terms and conditions below, travel time is not reimbursable under subparagraphs A and B hereunder.

A. An amount equal to the actual hourly billing rate billed by you for professional and technical personnel times the total number of hours actually spent by said personnel in the performance of services hereunder. No hour of services by an employee shall be compensable hereunder unless the employee is actually paid by you for such services at his usual salary rate. The hourly billing rate for each employee is the amount to be paid to you and is full compensation for all benefits, taxes, etc., paid by you. There shall be no change in the billing rates during the first year of the term of this Agreement and no additional compensation for overtime, weekend, or holiday work. Attached hereto is a schedule of names, titles and corresponding hourly billing rates. Clearly indicate if any of the employees, proposed by you to perform the requested services, are former Authority employees. Said schedule shall be the basis for determining compensation, subject to audit and shall be updated by you in writing as required until your services under this Agreement are completed. The Authority reserves the right of approval of all personnel and billing rates for said personnel performing services under this Agreement. For compensation purposes under this Agreement, no such salary or amount shall exceed the salary or amount received by said personnel or rate customarily billed for a partner or principal as of the effective date of this Agreement unless the Director has been notified in advance, in writing, of the increased salary, rate or amount and approves the increase, in writing.

The Consultant shall verify that its employees working under this Agreement are legally present and authorized to work in the United States, as per the federally required I-9 Program. Furthermore, upon request of the Authority, the Consultant shall furnish, or provide access to the Authority, federal Form I-9 (Employment Eligibility Verification) for each individual hired by the Consultant, performing services hereunder. This includes citizens and noncitizens.

When requesting salary or billing rate adjustments for one or more of its personnel, the Consultant shall submit to the Authority each employee's name, title, current direct hourly rate or billing rate, proposed new direct hourly salary or billing rate, resulting percentage increase, effective date and reason for the requested change setting forth in detail any increased costs to the Consultant of providing the services under this Agreement that gave rise to the request for increased salary or billing rates. For adjustments submitted after the effective date of this Agreement it is the intention of the Authority to grant an increase only if the Consultant demonstrates compliance with all of the following conditions: that increases in salary, or partner's or principal's billing rate or amount are in a) accordance with the program of periodic merit and cost of living increases normally administered by it, b) are warranted by increased costs of providing services under this Agreement, c) are based upon increases in salaries and billing rates that are generally applicable to all of Consultant's clients and d) are in accordance with the Authority's salary rate increase policy for the current year for Authority employees possessing comparable skills and experience. If during any calendar year, Authority limits are not available to the Consultant in a timely fashion, increases falling within such limits may be approved retroactively, as appropriate. The amount of increase in salary or billing rate, if any, to be applicable under this Agreement shall in all cases be finally determined by the Director or his designee, in their sole and absolute discretion.

B. Cost of Subconsultants. An amount equal to the amounts actually paid to subconsultants hereunder who have been retained after the written approval by the Director of the subconsultant

and the compensation to be paid the subconsultant. The Consultant shall submit a copy of the terms and conditions of the subconsultant's compensation as well as an estimate of the number of hours required by the subconsultant to perform its services, as part of any request for approval of the subconsultant.

C. Reimbursable Expenses. The Consultant shall also be compensated at an amount equal to the out-of-pocket expense, approved in advance by the Director, necessarily and reasonably incurred and actually paid by you in the performance of your services hereunder. Out-of-pocket expenses are expenses that are unique to the performance of your services under this Agreement and generally contemplate the purchase of outside ancillary services, except that for the purpose of this Agreement, out-of-pocket expenses do include amounts for long distance telephone calls; rentals of equipment; travel and local transportation; and meals and lodging on overnight trips.

Notwithstanding the above, the Authority will pay an amount approved in advance by the Director and computed as follows for the reproduction of submittal drawings, specifications and reports:

1) If the Consultant uses its own facilities to reproduce such documents, an amount computed in accordance with the billing rates the Consultant customarily charges for reproduction of such documents on agreements such as this, or

2) If the Consultant uses an outside vendor for the reproduction of such documents, the actual, necessary and reasonable amounts for the reproduction of such documents.

The expenses do not include expenses that are usually and customarily included as part of the Consultant's overhead. For the purposes of this Agreement, expenses that are not reimbursable include, without limitation, amounts for mailing and delivery charges, typing, utilization of computer systems, cameras, recording or measuring devices, flashlights and other small, portable equipment, safety supplies, phones, telephone calls, electronic messaging including FAX, or expendable office supplies. Unless otherwise indicated, required insurance is not a reimbursable expense.

When the Consultant uses his personal vehicle to provide services within the Port District, the Consultant shall be reimbursed for travel expenses beyond normal commuting costs at a rate not higher than the Annual Federal Mileage Reimbursement Rate (as determined by the Internal Revenue Services - <http://www.gsa.gov/portal/content/100715>) per mile traveled by auto.

When the Consultant is asked to provide services outside the Port District, the actual cost of transportation as well as the cost for hotel accommodations and meals shall be reimbursable hereunder when approved in advance in writing by the Director. If the Consultant chooses to travel each day to an assignment, where it would be more economical to take a hotel room near the assignment, the maximum reimbursable travel expenses shall not exceed the daily cost for meals and lodging. Reimbursable travel shall be limited to one round trip per week's service except when otherwise approved in advance and in writing by the Director. The cost for all meals and lodging on approved overnight trips are limited to the amounts established by the United States General Services Administration for that locality.

GSA Domestic Rates: <http://www.gsa.gov/portal/category/21287>

You shall obtain the Director's written approval prior to making expenditures for out-of-pocket expenses in excess of \$1,000 per specific expenditure and for all overnight trips, which are reimbursable expenditures as set forth above. You shall substantiate all billings for out-of-pocket expenses in excess of \$25 with receipted bills and provide said receipts with the appropriate billing.

D. As used herein:

"Port District" is an area comprised of about 1,500 square miles in the States of New York and New Jersey, centering about New York Harbor. The Port District includes the Cities of New York and Yonkers in New York State, and the cities of Newark, Jersey City, Bayonne, Hoboken and Elizabeth in the State of New Jersey, and over 200 other municipalities, including all or part of seventeen counties, in the two States.

"Salaries paid to employees" or words of similar import shall mean salaries and amounts actually paid (excluding payments or factors for holidays, vacations, sick time, bonuses, profit participations and other similar payments) to professional and technical employees of the Consultant, for time actually spent directly in the performance of technical services hereunder and recorded on daily time records that have been approved by the employee's immediate supervisor, excluding the time of any employee of the Consultant to the extent that the time of such employee of the Consultant is devoted to typing/word processing, stenographic, clerical or administrative functions. Such functions shall be deemed to be included in the rates referred to in subparagraph A above.

9. You shall keep, and shall cause any subconsultants under this Agreement to keep, daily records of the time spent in the performance of services hereunder by all persons whose salaries or amounts paid thereto will be the basis for compensation under this Agreement as well as records of the amounts of such salaries and amounts actually paid for the performance of such services and records and receipts of reimbursable expenditures hereunder, and, notwithstanding any other provisions of this Agreement, failure to do so shall be a conclusive waiver of any right to compensation for such services or expenses as are otherwise compensable hereunder. The Authority shall have the right to audit all such records.

The Authority shall have the right to inspect your records, and those of your subconsultants, pertaining to any compensation to be paid hereunder, such records to be maintained by you and your subconsultants for a period of three years after completion of services to be performed under this Agreement.

10. On or about the fifteenth day of each month, you shall render an invoice for services performed and reimbursable out-of-pocket expenses incurred in the prior month, accompanied by such records and receipts as required, to the Project Manager. Each invoice shall bear your taxpayer number and the purchase order number provided by the Director. Upon receipt of the foregoing, the Director will estimate and certify to the Authority the approximate amount of compensation earned by you up to that time. As an aid to you the Authority shall, within thirty (30) days after receipt of such certification by the Director, advance to you by check the sum certified minus all prior payments to you for your account.

11. The Authority may at any time for cause terminate this Agreement as to any services not yet rendered, and may terminate this Agreement in whole or in part without cause upon three (3) days notice to you. You shall have no right of termination as to any services under this Agreement without just cause. Termination by either party shall be by certified letter addressed to the other at its address hereinbefore set forth. Should this Agreement be terminated in whole or in part by either party as above provided, you shall receive no compensation for any services not yet performed, but if termination is without fault on your part, the Authority shall pay you as the full compensation to which you shall be entitled in connection with this Agreement the amounts computed as above set forth for services completed to the satisfaction of the Director through the date of termination, minus all prior payments to you.

12. You shall not issue or permit to be issued any press release, advertisement, or literature of any kind, which refers to the Authority or the services performed in connection with this Agreement, unless you first obtain the written approval of the Director. Such approval may be withheld if for any reason the Director believes that the publication of such information would be harmful to the public interest or is in any way undesirable.

13. Under no circumstances shall you or your subconsultants communicate in any way with any Consultant, department, board, agency, commission or other organization or any person whether governmental or private in connection with the services to be performed hereunder except upon prior written approval and instructions of the Director, provided, however that data from manufacturers and suppliers of material shall be obtained by you when you find such data necessary unless otherwise instructed by the Director.

14. Any services performed for the benefit of the Authority at any time by you or on your behalf, even though in addition to those described herein, even if expressly and duly authorized by the Authority, shall be deemed to be rendered under and subject to this Agreement (unless referable to another express written, duly executed agreement by the same parties), whether such additional services are performed prior to, during or subsequent to the services described herein, and no rights or obligations shall arise out of such additional services.

15. No certificate, payment (final or otherwise), acceptance of any work or any other act or omission of the Authority or the Director shall operate to release you from any obligations under or upon this Agreement, or to estop the Authority from showing at any time that such certificate, payment, acceptance, act or omission was incorrect or to preclude the Authority from recovering any money paid in excess of that lawfully due, whether under mistake of law or fact or to prevent the recovery of any damages sustained by the Authority.

16. All originals of technical specifications, estimates, reports, records, data, charts, documents, computations or disks, and other papers of any type whatsoever, whether in the form of writing, figures or delineations, which are prepared or compiled in connection with this Agreement, shall become the property of the Authority, and the Authority shall have the right to use or permit the use of them and any ideas or methods represented by them for any purpose and at any time without other compensation than that specifically provided herein. The Consultant hereby

warrants and represents that the Authority will have at all times the ownership and rights provided for in the immediately preceding sentence free and clear of all claims of third persons whether presently existing or arising in the future and whether presently known to either of the parties of this Agreement or not. This Agreement shall not be construed, however, to require the Consultant to obtain for the Consultant and the Authority the right to use any idea, design, method, material, equipment or other matter which is the subject of a valid patent, unless owned by the Consultant, or subconsultant, or an employee of either. Whether or not your Proposal is accepted by the Authority, it is agreed that all information of any nature whatsoever which is in any way connected with the services performed in connection with this Agreement, regardless of the form of which has been or may be given by you or on your behalf, whether prior or subsequent to the execution of this Agreement, to the Authority, its Commissioners, officers, agents or employees, is not given in confidence and may be used or disclosed by or on behalf of the Authority without liability of any kind, except as may arise under valid existing or pending patents, if any.

17. If research or development is furnished in connection with the performance of this Agreement and if in the course of such research or development patentable subject matter is produced by the Consultant, its officers, agents, employees, or subconsultants, the Authority shall have, without cost or expense to it, an irrevocable, non-exclusive royalty-free license to make, have made, and use, either itself or by anyone on its behalf, such subject matter in connection with any activity now or hereafter engaged in or permitted by the Authority. Promptly upon request by the Authority, the Consultant shall furnish or obtain from the appropriate person a form of license satisfactory to the Authority, but it is expressly understood and agreed that, as between the Authority and the Consultant the license herein provided for shall nevertheless arise for the benefit of the Authority immediately upon the production of said subject matter, and shall not await formal exemplification in a written license agreement as provided for above. Such license agreement may be transferred by the Authority to its successors, immediate or otherwise, in the operation or ownership of any real or personal property now or hereafter owned or operated by the Authority but such license shall not be otherwise transferable.

18. The Consultant shall defend, indemnify and hold harmless the Authority against all claims of intellectual property infringement arising out of or in connections with the Consultant's services hereunder.

The Consultant shall promptly and fully inform the Director in writing of any Intellectual Property, and any patents or patent disputes, whether existing or potential, of which you have knowledge, relating to any idea, design, method, material, equipment or other matter related to the subject matter of this Agreement or coming to your attention in connection with this Agreement.

19. This Agreement being based upon your special qualifications for the services herein contemplated, any assignment, subletting or other transfer of this Agreement or any part hereof or of any moneys due or to become due hereunder without the express consent in writing of the

Authority shall be void and of no effect as to the Authority, provided, however, that you may sublet services to subconsultants with the express consent in writing of the Director. All persons to whom you sublet services, however, shall be deemed to be your agents and no subletting or approval thereof shall be deemed to release you from your obligations under this Agreement or to impose any obligation on the Authority to such subconsultant or give the subconsultant any rights against the Authority.

20. The Authority has a long-standing practice of encouraging Minority Business Enterprises (MBEs) and Women Business Enterprises (WBEs) to seek business opportunities with it, either directly as Consultants or as subconsultants. "Minority-owned business" or "MBE" means a business entity which is at least 51 percent owned by one or more members of one or more minority groups, or, in the case of a publicly held corporation, at least 51 percent of the stock of which is owned by one or more members of one or more minority groups; and whose management and daily business operations are controlled by one or more such individuals who are citizens or permanent resident aliens. "Women-owned business" or "WBE" means a business which is at least 51 percent owned by one or more women; or, in the case of a publicly held corporation, 51 percent of the stock of which is owned by one or more women; and whose management and daily business operations are controlled by one or more women who are citizens or permanent resident aliens.

"Minority group" means any of the following racial or ethnic groups:

A. Black persons having origins in any of the Black African racial groups not of Hispanic origin;

B. Hispanic persons of Puerto Rican, Mexican, Dominican, Cuban, Central or South American culture or origin, regardless of race;

C. Asian and Pacific Islander persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent or the Pacific Islands;

D. American Indian or Alaskan Native persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification.

The Authority has set a goal of 12 percent participation by qualified and certified MBEs and 5 percent by qualified and certified WBEs for technical service projects.

To be "certified" a firm must be certified by the Authority's Office of Business Diversity and Civil Rights.

In order to facilitate meeting this goal, Consultant shall use every good faith effort to utilize subconsultants who are Authority-certified MBEs or WBEs to the maximum extent feasible.

The Authority has a list of certified MBE/WBE service firms, which is available to you at: <http://www.panynj.gov/business-opportunities/supplier-diversity.html>. The Consultant will be required to submit to the Office of Business Diversity and Civil Rights for certification the

names of MBE/WBE firms that Consultant proposes to use who are not on the list of Authority-certified MBE/WBE firms.

21. NOTIFICATION OF SECURITY REQUIREMENTS

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

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

- Consultant/ Subconsultant identity checks and background screening

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

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

As of January 29, 2007, the Secure Worker Access Consortium (S.W.A.C.) is the only Authority approved provider to be used to conduct background screening and personal identity verification, except as otherwise required by federal law and/or regulation (such as the Transportation Worker Identification Credential for personnel performing in secure areas at Maritime facilities). Information about S.W.A.C., instructions, corporate enrollment, online applications, and location of processing centers is located at <http://www.secureworker.com>, or S.W.A.C. may be contacted directly at (877) 522-7922 for more information and the latest pricing. If approved by the Project Manager, the cost for said background checks for staff that pass and are granted a credential shall be reimbursable to the Consultant (and its subconsultants) as an out-of-pocket expense as provided herein. Staff that are rejected for a credential for any reason are not reimbursable.

- Issuance of Photo Identification Credential

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

Staff may be required to produce not less than two forms of valid/current government issued identification having an official photograph and an original, non-laminated social security card for identity and SSN verification.

- Designated Secure Areas

Services under the Agreement may be required in designated secure areas, as the same may be designated by the Authority ("Secure Areas"). The Authority shall require the observance of certain security procedures with respect to Secure Areas, which may include escorting the Consultant's personnel to, at, and/or from said high security areas by security personnel. All personnel that require access to designated Secure Areas who are not under escort by an authorized individual will be required to undergo background screening and personal identity verification.

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

- Access control, inspection, and monitoring by security guards

The Authority may provide for Authority construction sites or facilities (including rental spaces) access control, inspection, and monitoring by Port Authority Police or Authority retained contractor security guards. However, this provision shall not relieve the Consultant of its responsibility to secure its equipment and work and that of its subconsultants and service suppliers at Authority construction sites or facilities (including rental spaces). In addition, the Consultant, subconsultant or service provider is not permitted to take photographs, digital images, electronic copying and/or electronic transmission or video recordings or make sketches on any other medium at Authority construction sites or facilities (including rental spaces), except

when necessary to perform the Work under this Agreement, without prior written permission from the Authority. Upon request, any photograph, digital images, video recording or sketches made of Authority construction sites or facilities shall be submitted to the Authority to determine compliance with this paragraph, which submission shall be conclusive and binding on the submitting entity.

- Compliance with the Port Authority Information Security Handbook

The Agreement may require access to Authority information considered Confidential Information as defined in *The Port Authority of New York & New Jersey Information Security Handbook (October 15, 2008, corrected as of February, 9 2009)*, and as may be further amended (Handbook). The Handbook and its requirements are hereby incorporated into this Agreement and will govern the possession, distribution and use of Confidential Information. Protecting sensitive information requires the application of uniform safeguarding measures to prevent unauthorized disclosure and to control any authorized disclosure of this information within the Authority or when released by the Authority to outside entities. The Handbook can be obtained upon request or at: <http://www.panynj.gov/business-opportunities/pdf/Corporate-Information-Security-Handbook.pdf>

- Audits for Compliance with Security Requirements

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

22. CONFIDENTIAL INFORMATION

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

B. Confidential Information shall also mean and include collectively, as per *The Port Authority of New York & New Jersey Information Security Handbook (October 15, 2008, corrected as of February, 9 2009)*, Confidential Proprietary Information, Confidential Privileged Information and information that is labeled, marked or otherwise identified by or on behalf of the Authority so as to reasonably connote that such information is confidential, privileged, sensitive or proprietary in nature. Confidential Information shall also include all work product that contains or is derived from any of the foregoing, whether in whole or in part, regardless of whether prepared by the Authority or a third-party or when the Authority receives such information from others and agrees to treat such information as Confidential.

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

D. Consultant's obligations with respect to confidentiality and document security are set forth in a Non-Disclosure and Confidentiality Agreement, between the Authority and Consultant (the "Confidentiality Agreement"; Exhibit A of the Port Authority Standard Agreement). Consultant hereby agrees to execute the Confidentiality Agreement, and hereby agrees the Confidentiality Agreement is and remains in full force and effect in accordance with its terms.

E. Without the express written approval of the Director, you shall keep confidential, and shall require your subconsultants and your employees to keep confidential (a) all information disclosed by the Authority or its consultants or contractors to you or (b) developed by you or your subconsultants in the performance of services hereunder. At the direction of the Authority, you shall be required to have your employees, subconsultants and their employees execute, non-disclosure agreements. Disclosure of any such information shall constitute a material breach of the Agreement.

23. The Consultant assumes the following distinct and several risks to the extent arising from the negligent or willful intentional acts or omissions of the Consultant or its subconsultants in the performance of services hereunder:

A. The risk of loss or damage to Authority property arising out of or in connection with the performance of services hereunder;

B. The risk or loss or damage to any property of the Consultant or its subconsultants arising out of or in connection with the performance of services hereunder;

C. The risk of claims, arising out of or in connection with the performance of services hereunder, whether made against the Consultant or its subconsultants or the Authority, for loss or damage to any property of the Consultant's agents, employees, subcontractors, subconsultants, materialmen, or others performing services hereunder;

D. The risk of claims, just or unjust, by third persons made against the Consultant or its subconsultants or the Authority on account of injuries (including wrongful death), loss or damage of any kind whatsoever arising in connection with the performance of services hereunder including claims against the Consultant or its subconsultants or the Authority for the payment of workers' compensation, whether such claims are made and whether such injuries, damage and loss are sustained at any time both before and after the completion of services hereunder.

The Consultant shall indemnify the Authority against all claims described in subparagraphs A through D above and for all expense incurred by it in the defense, settlement or satisfaction thereof, including expenses of attorneys. If so directed, the Consultant shall defend against any claim described in subparagraphs B, C and D above, in which event he shall not without obtaining express advance permission from the General Counsel of the Authority raise any defense involving in any way jurisdiction of the tribunal, immunity of the Authority, governmental nature of the Authority or the provisions of any statutes respecting suits against the Authority, such defense to be at the Consultant's cost.

The provisions of this clause shall also be for the benefit of the Commissioners, officers, agents and employees of the Authority, so that they shall have all the rights which they would have under this clause if they were named at each place above at which the Authority is named, including a direct right of action against the Consultant to enforce the foregoing indemnity, except, however, that the Authority may at any time in its sole discretion and without liability on its part cancel the benefit conferred on any of them by this clause, whether or not the occasion for invoking such benefit has already arisen at the time of such cancellation.

Neither the completion of services hereunder nor the making of payment (final or otherwise) shall release the Consultant from its obligations under this clause. Moreover, neither the enumeration in this clause or the enumeration elsewhere in this Agreement of particular risks assumed by the Consultant or of particular claims for which it is responsible shall be deemed (a) to limit the effect of the provisions of this clause or of any other clause of this Agreement relating to such risks or claims, (b) to imply that it assumes or is responsible for risks or claims only of the type enumerated in this clause or in any other clause of this Agreement, or (c) to limit the risks which it would assume or the claims for which it would be responsible in the absence of such enumerations.

No third party rights are created by the Agreement, except to the extent that the Agreement specifically provides otherwise by use of the words "benefit" or "direct right of action".

Inasmuch as the Authority has agreed to indemnify the Cities of New York and Newark against claims of the types described in subparagraph D above made against said cities, the Consultant's obligation under subparagraph D above shall include claims by said cities against the Authority for such indemnification.

24. LIABILITY INSURANCE AND WORKERS' COMPENSATION INSURANCE

A. Commercial Liability Insurance:

1) The Consultant shall take out and maintain at its own expense Commercial General Liability Insurance including but not limited to Premises-Operations, Completed Operations and Independent Contractors' coverages in limits of not less than \$5,000,000 combined single limit per occurrence for Bodily Injury Liability and Property Damage Liability. And if vehicles are to be used to carry out the performance of this Agreement, then the Consultant shall also take out, maintain and pay the premiums on Automobile Liability Insurance covering all owned, non-owned and hired autos in not less than \$5,000,000 combined single limit per accident for bodily injury and property damage. In addition, the liability policies (other than Professional Liability) shall include the "Port Authority of New York and New Jersey" and its related entities as additional insureds and shall contain a provision that the policy may not be canceled, terminated or modified without thirty (30) days written advance notice to the Project Manager. Moreover, the Commercial General Liability policy shall not contain any provisions (other than a Professional Liability exclusion, if any) for exclusions from liability other than provisions or exclusions from liability forming part of the most up to date ISO form or its equivalent, unendorsed Commercial General Liability Policy. The liability policy(ies) and certificate of insurance shall contain separation of insured condition (cross-liability) and severability of interests provisions so that coverage will respond as if separate policies were in force for each insured. Furthermore, the Consultant's insurance shall be primary insurance as respects to the above additional insureds. Any insurance or self insurance maintained by the above additional insureds shall not contribute to any loss or claim.

Further, the certificate of insurance and the liability policy(ies) shall be specifically endorsed that *" The insurance carrier(s) shall not, without obtaining the express advance permission from the General Counsel of the Port Authority, raise any defense involving in any way the jurisdiction of the Tribunal over the person of the Port Authority, the immunity of the Port Authority, its Commissioners, officers, agents or employees, the governmental nature of the Port Authority, or the provisions of any statutes respecting suits against the Port Authority"*

2) Additional Coverages: The Consultant shall have the policy endorsed when required by the Director for specific services hereunder and include the additional premium cost thereof as an out-of-pocket expense:

- a) Endorsement to eliminate any exclusions applying to the explosion, collapse underground property damage (XCU) hazards.
- b) Endorsement to eliminate any exclusions on account of ownership, maintenance, operation, use, loading or unloading of watercraft.
- c) Coverage for work within 50 feet of railroad.

B. Workers' Compensation Insurance:

1) The Consultant shall take out and maintain Workers' Compensation Insurance in accordance with the requirements of law and Employer's Liability Insurance with limits of not

less than \$1,000,000 each accident. A waiver of subrogation in favor of the Authority and its related entities, as allowed by law, shall be included.

2) Additional Coverages: The Consultant shall have the policy endorsed when required by the Engineer for specific services hereunder and include the additional premium cost thereof as an out-of-pocket expense:

- a) United States Longshoremen's and Harbor Workers' Compensation Act Endorsement.
- b) Coverage B Endorsement - Maritime (Masters or Members of the Crew of Vessels), in limits of not less than \$1,000,000 per occurrence.
- c) Amendments to Coverage B, Federal Employers' Liability Act in limits of not less than \$1,000,000 per occurrence.

C. Professional Liability Insurance:

1) The Consultant shall take out and maintain Professional Liability Insurance in limits of not less than \$2,000,000 each occurrence, covering negligent acts, errors, mistakes, and omissions arising out of the work or services performed by Consultant, or any person employed by Consultant. All endorsements and exclusions shall be evidenced on the certificate of insurance. The coverage shall be written on an occurrence form or may be written on a claims made basis with a minimum of a three (3)-year reporting/discovery period.

D. Compliance:

Prior to commencement of work at the site, the Consultant shall deliver a certificate from its insurer evidencing policies of the above insurance stating the title of this Agreement, the P. A. Agreement number and containing a separate express statement of compliance with each of the requirements above set forth, via e-mail to the Project Manager.

1) Renewal certificates of insurance or policies shall be delivered via e-mail to the Authority's Project Manager at least fifteen (15) days prior to the expiration date of each expiring policy. The General Manager, Risk Financing must approve the renewal certificate(s) of insurance before work can resume. If at any time any of the certificates or policies shall become unsatisfactory to the Authority, the Consultant shall promptly obtain a new and satisfactory certificate and policy.

2) If at any time the above liability insurance should be canceled, terminated, or modified so that the insurance is not in effect as above required, then, if the Project Manager shall so direct, the Consultant shall suspend performance of the Agreement at the premises. If the Agreement is so suspended, no extension of time shall be due on account thereof. If the Agreement is not suspended (whether or not because of omission of the Project Manager to order suspension), then the Authority may, at its option, obtain insurance affording coverage equal to the above required, the cost of such insurance to be payable by the Consultant to the Authority.

3) Upon request of the General Manager, Risk Management/Treasury, the Consultant shall furnish to the Authority a certified copy of each policy itself, including the provisions establishing premiums.

4) The requirements for insurance procured by the Consultant shall not in any way be construed as a limitation on the nature or extent of the contractual obligations assumed by the Consultant under this Agreement. The insurance requirements are not a representation by the Authority as to the adequacy of the insurance to protect the Consultant against the obligations imposed on them by law or by this or any other Agreement.

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

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

By proposing on this Agreement, each Consultant and each person signing on behalf of any Consultant certifies, and in the case of a joint proposal each party thereto certifies as to its own organization, that the Consultant and each parent and/or affiliate of the Consultant has not:

- A. been indicted or convicted in any jurisdiction;
- B. been suspended, debarred, found not responsible or otherwise disqualified from entering into any agreement with any governmental agency or been denied a government agreement for failure to meet standards related to the integrity of the Consultant;
- C. had an agreement terminated by any governmental agency for breach of agreement or for any cause based in whole or in part on an indictment or conviction;
- D. ever used a name, trade name or abbreviated name, or an Employer Identification Number different from those inserted in the Proposal;
- E. had any business or professional license suspended or revoked or, within the five years prior to proposal opening, had any sanction imposed in excess of \$50,000 as a result of any judicial or administrative proceeding with respect to any license held or with respect to any violation of a federal, state or local environmental law, rule or regulation;
- F. had any sanction imposed as a result of a judicial or administrative proceeding related to fraud, extortion, bribery, proposal rigging, embezzlement, misrepresentation or anti-trust regardless of the dollar amount of the sanctions or the date of their imposition; and
- G. been, and is not currently, the subject of a criminal investigation by any federal, state or local prosecuting or investigative agency and/or a civil anti-trust investigation by any federal, state or local prosecuting or investigative agency.

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

By proposing on this Agreement, each Consultant and each person signing on behalf of any Consultant certifies, and in the case of a joint proposal, each party thereto certifies as to its own organization, that:

A. the prices in its proposal have been arrived at independently without collusion, consultation, communication or agreement for the purpose of restricting competition, as to any matter relating to such prices with any other consultant or with any competitor;

B. the prices quoted in its proposal have not been and will not be knowingly disclosed directly or indirectly by the Consultant prior to the official opening of such proposal to any other consultant or to any competitor;

C. no attempt has been made and none will be made by the Consultant to induce any other person, partnership or corporation to submit or not to submit a proposal for the purpose of restricting competition;

D. this organization has not made any offers or agreements or taken any other action with respect to any Authority employee or former employee or immediate family member of either which would constitute a breach of ethical standards under the Code of Ethics dated April 11, 1996 (a copy of which is available upon request to the Authority), nor does this organization have any knowledge of any act on the part of an Authority employee or former Authority employee relating either directly or indirectly to this organization which constitutes a breach of the ethical standards set forth in said Code;

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

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

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

The foregoing certifications, shall be deemed to be made by the Consultant as follows:

* if the Consultant is a corporation, such certification shall be deemed to have been made not only with respect to the Consultant itself, but also with respect to each parent, affiliate,

director, and officer of the Consultant, as well as, to the best of the certifier's knowledge and belief, each stockholder of the Consultant with an ownership interest in excess of 10%;

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

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

In any case where the Consultant cannot make the foregoing certifications, the Consultant shall so state and shall furnish with the signed proposal a signed statement, which sets forth in detail the reasons therefor. If the Consultant is uncertain as to whether it can make the foregoing certifications, it shall so indicate in a signed statement furnished with its proposal, setting forth in such statement the reasons for its uncertainty. With respect to the foregoing certification in paragraph "26G.", if the Consultant cannot make the certification, it shall provide, in writing, with the signed proposal: (i) a list of the name(s), address(es), telephone number(s), and place(s) of principal employment of each such individual or organization; and (ii) a statement as to whether such individual or organization has a "financial interest" in this Agreement as described in the Procurement Disclosure policy of the Authority (a copy of which is available upon request to the Director of the Procurement Department of the Authority). Such disclosure is to be updated, as necessary, up to the time of award of this Agreement. As a result of such disclosure, the Authority shall take appropriate action up to and including a finding of non-responsibility.

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

Notwithstanding that the Consultant may be able to make the foregoing certifications at the time the proposal is submitted, the Consultant shall immediately notify the Authority in writing during the period of irrevocability of proposals on this Agreement or any extension of such period of any change of circumstances which might under this clause make it unable to make the foregoing certifications or required disclosure. The foregoing certifications or signed statement shall be deemed to have been made by the Consultant with full knowledge that they would become a part of the records of the Authority and that the Authority will rely on their truth and accuracy in awarding this Agreement. In the event that the Authority should determine at any time prior or subsequent to the award of this Agreement that the Consultant has falsely certified as to any material item in the foregoing certifications, has failed to immediately notify the Authority of any change in circumstances which might make it unable to make the foregoing certifications, might render any portion of the certifications previously made invalid or require disclosure, or has willfully or fraudulently furnished a signed statement which is false in any material respect, or has not fully and accurately represented any circumstance with respect to any item in the foregoing certifications required to be disclosed, the Authority may determine that the Consultant is not a responsible Consultant with respect to its proposal on the Agreement or with respect to future proposals on Authority agreements and may exercise such other remedies as are provided to it by the Agreement with respect to these matters. In addition, Consultants are

advised that knowingly providing a false certification or statement pursuant hereto may be the basis for prosecution for offering a false instrument for filing (see, e.g. New York Penal Law, Section 175.30 et seq.). Consultants are also advised that the inability to make such certification will not in and of itself disqualify a Consultant, and that in each instance the Authority will evaluate the reasons therefor provided by the Consultant. Furthermore, the Consultant selected for performance of the subject services shall immediately notify the Authority in writing, at any time during the term of the Agreement, of any change of circumstances which might under this clause make it unable to make the foregoing certifications, or might require disclosure.

Under certain circumstances the Consultant may be required as a condition of this Agreement award to enter into a Monitoring Agreement under which it will be required to take certain specified actions, including compensating an independent Monitor to be selected by the Authority. Said Monitor shall be charged with, among other things, auditing the actions of the Consultant to determine whether its business practices and relationships indicate a level of integrity sufficient to permit it to continue business with the Authority.

27. CONSULTANT ELIGIBILITY FOR AWARD OF AGREEMENTS - DETERMINATION BY AN AGENCY OF THE STATE OF NEW YORK OR NEW JERSEY CONCERNING ELIGIBILITY TO RECEIVE PUBLIC AGREEMENTS

Consultants are advised that the Authority has adopted a policy to the effect that in awarding its agreements it will honor any determination by an agency of the State of New York or New Jersey that a Consultant is not eligible to propose on or be awarded public agreements because the Consultant has been determined to have engaged in illegal or dishonest conduct or to have violated prevailing rate of wage legislation.

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

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

28. CONSULTANT RESPONSIBILITY, SUSPENSION OF WORK AND TERMINATION

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

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

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

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

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

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

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

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

In addition, during the term of this Agreement, the Consultant shall not make an offer of employment or use confidential information in a manner proscribed by the Code of Ethics and Financial Disclosure dated April 11, 1996 (a copy of which is available upon request to the Office of the Secretary of the Authority).

Without the express written approval of the Director, you shall keep confidential, and shall require your employees, your subconsultants, and your subconsultant's employees to keep confidential a) all information disclosed by the Authority or its consultants to you or b) developed by you or your subconsultants in the performance of services hereunder. Disclosure of any such information shall constitute a material breach of the Agreement.

The Consultant shall include the provisions of this clause in each subagreement entered into under this Agreement.

30. CONFLICT OF INTEREST

During the term of this Agreement, the Consultant shall not participate in any way in the preparation, negotiation or award of any agreement (other than an agreement for its own services to the Authority) to which it is contemplated the Authority may become a party, or participate in any way in the review or resolution of a claim in connection with such an agreement if the Consultant has a substantial financial interest in the Consultant or potential Consultant of the Authority or if the Consultant has an arrangement for future employment or for any other business relationship with said Consultant or potential Consultant, nor shall the Consultant at any time take any other action which might be viewed as or give the appearance of conflict of interest on its part. If the possibility of such an arrangement for future employment or for another business arrangement has been or is the subject of a previous or current discussion, or if the Consultant has reason to believe such an arrangement may be the subject of future discussion, or if the Consultant has any financial interest, substantial or not, in a Consultant or potential Consultant of the Authority, and the Consultant's participation in the preparation, negotiation or award of any agreement with such a Consultant or the review or resolution of a claim in connection with such an agreement is contemplated or if the Consultant has reason to believe that any other situation exists which might be viewed as or give the appearance of a conflict of interest, the Consultant shall immediately inform the Director in writing of such situation giving the full details thereof. Unless the Consultant receives the specific written approval of the Director, the Consultant shall not take the contemplated action which might be viewed as or give the appearance of a conflict of interest. The Director may require the Consultant to submit a mitigation plan addressing and mitigating any disclosed or undisclosed conflict, which is subject to the approval of the Director and shall become a requirement, as though fully set forth in this Agreement. In the event the Director shall determine that the performance by the Consultant of a

portion of its services under this Agreement is precluded by the provisions of this numbered paragraph, or a portion of the Consultant's said services is determined by the Director to be no longer appropriate because of such preclusion, then the Director shall have full authority on behalf of both parties to order that such portion of the Consultant's services not be performed by the Consultant, reserving the right, however, to have the services performed by others and any lump sum compensation payable hereunder which is applicable to the deleted work shall be equitably adjusted by the parties. The Consultant's execution of this document shall constitute a representation by the Consultant that at the time of such execution the Consultant knows of no circumstances, present or anticipated, which come within the provisions of this paragraph or which might otherwise be viewed as or give the appearance of a conflict of interest on the Consultant's part. The Consultant acknowledges that the Authority may preclude it from involvement in certain disposition/privatization initiatives or transactions that result from the findings of its evaluations hereunder or from participation in any agreements which result, directly or indirectly, from the services provided by the Consultant hereunder. The Authority's determination regarding any question of conflict of interest shall be final.

31. DEFINITIONS

As used in sections 25 to 30 above, the following terms shall mean:

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

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

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

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

Parent - An individual, partnership, joint venture or corporation, which owns more than 50% of the voting stock of the Consultant.

32. This Agreement does not designate the Consultant as the agent or representative of the Authority for any purpose whatsoever except as may be specifically provided in this Agreement. It is hereby specifically acknowledged and understood that the Consultant, in performing its services hereunder, is and shall be at all times an independent Consultant and the officers, agents

and employees of the Consultant shall not be or be deemed to be agents, servants or employees of the Authority.

33. The entire Agreement between the parties is contained herein and no change in or modification, termination or discharge of this Agreement in any form whatsoever shall be valid or enforceable unless it is in writing and signed by the party to be charged therewith, or his/her duly authorized representative, provided, however, that termination in the manner hereinbefore expressly provided shall be effective as so provided.

34. No commissioner, officer, agent or employee of the Authority shall be charged personally by you with any liability or held liable to you under any term or provision of this Agreement, or because of its execution or attempted execution or because of any breach hereof.

35. If the foregoing meets with your approval, please indicate your acceptance by signing the original and the additional enclosed copy in the lower right-hand corner and returning them to the Authority.

Very truly yours,

ACCEPTED:

THE PORT AUTHORITY OF
NEW YORK AND NEW JERSEY

<FIRM>

Lillian D. Valenti
Director
Procurement Department

By: _____

Title: _____

Date _____

Date: _____

INSTRUCTIONS

If the selected Consultant firm is not located in the States of New York or New Jersey, change the number of the last Paragraph of this Agreement from "35" to "36" and insert a new Paragraph "35": as follows:

35. This Agreement shall be governed by and construed in accordance with the laws of the State of New York without regard to conflict of laws principles.