

THE PORT AUTHORITY OF NY & NJ
PROCUREMENT DEPARTMENT
ATTN: BID/PROPOSAL CUSTODIAN
TWO MONTGOMERY STREET, 3RD FLOOR
JERSEY CITY, NEW JERSEY 07302

REQUEST FOR PROPOSALS

ISSUE DATE: 7/16/14

**TITLE: Urine Specimen Collection for Drug Testing and Breath Alcohol
Testing - Three (3) Year Requirements Contract.**

RFP NO.: 38742

**SUBMIT PROPOSALS NO LATER THAN THE DUE DATE AND TIME TO THE
ABOVE ADDRESS**

PROPOSAL DUE DATE: August 7, 2014 TIME: 2:00 P.M.

QUESTIONS DUE BY: August 1, 2014 via e-mail at snelson@panynj.gov

SITE INSPECTION: July 24, 2014 TIME: 10:00 A.M.

BUYER: SHANTA NELSON
PHONE: (201) 395-3480
FAX: (201) 395-3425
EMAIL: snelson@panynj.gov

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1. INFORMATION FOR PROPOSERS ON THIS REQUEST FOR PROPOSALS

A. General Information: The Port Authority of New York and New Jersey

The Port Authority of New York and New Jersey (the "Port Authority" or the "Authority") is an agency 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 Port Authority manages and/or operates all of the region's major commercial airports (Newark Liberty International, John F. Kennedy International, Teterboro, LaGuardia and Stewart International Airports), 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."

In addition, the Port Authority operates the Port Authority Bus Terminal in Manhattan, the largest facility of its kind in the world, and the George Washington Bridge and Journal Square Transportation Center bus stations. A key link in interstate commuter travel, the Port Authority also operates the Port Authority Trans-Hudson Corporation (PATH), a rapid rail transit system linking Newark, and the Jersey City and Hoboken waterfronts, with midtown and downtown Manhattan. A number of other key properties are managed by the agency including but not limited to a large satellite communications facility (the Teleport) in Staten Island, and a resource recovery co-generation plant in Newark. Prior to September 11, 2001, the Port Authority's headquarters were located in the World Trade Center, and that complex is still owned and being partially redeveloped by the Authority.

The Port Authority and PATH are hereby seeking proposals from qualified firms to conduct urine specimen collection for drug testing and breath alcohol testing of certain safety sensitive and non-safety sensitive personnel. Collections of specimens and breath alcohol testing are to be done at collection sites at each of the Port Authority's and PATH's facilities/properties throughout the New York/New Jersey Metropolitan area (Attachment H Exhibit I).

B. Brief Summary of Scope of Work

The Contractor shall conduct urine specimen collection for drug testing and breath alcohol testing of certain safety sensitive and non-safety sensitive personnel in accordance with the terms and conditions and Specifications set forth herein. Collection of specimens and breath alcohol testing are to be done at collection sites at

each of the Port Authority's and PATH's facilities/properties throughout the New York/New Jersey Metropolitan area as more fully set forth in the Specifications in Part II of Attachment B.

C. Deadline for Receipt of Proposals

The due date specified on the cover page is the Proposal Due Date. Closing of due date is 2:00 P.M., Eastern Daylight Savings Time. The Port Authority assumes no responsibility for delays caused by any delivery service.

D. Vendor Profile

To ensure maximum opportunities, it is vitally important that Proposers keep their vendor profiles up to date with an appropriate e-mail address, as this will enable their firm to receive timely notice of advertisements, reminders, solicitations and addenda. Proposers may update their vendor profile or register as a Port Authority Vendor by accessing the online registration system at <https://panynjprocure.com/VenLogon.asp>.

E. Submission of Proposals

One reproducible original (containing original signatures and clearly designated as such) and seven (7) double-sided copies of the proposal must be submitted on or before the due date and time in accordance with the information on the cover page of this RFP and sent or delivered to the RFP Custodian at the address specified on the cover page. Each copy of the proposal as well as the parcel(s) used for shipping must be conspicuously marked with the Proposer's name and address as well as the Proposer's Vendor Number, if available. In addition, the outside of the package must clearly state the title of this RFP, the number of this RFP and the Proposal Due Date. Failure to properly label proposal submissions may cause a delay in identification, misdirection or disqualification of proposal submissions.

It is necessary to carry valid photo identification when attempting to gain access into the building to hand deliver proposals.

Consistent with environmentally preferable procurement practices, the Port Authority requests all documents submitted to be in a form that can be easily recycled (i.e., no plastic covers or binding) and to provide only supporting literature which directly relates to the proposal being submitted.

F. Communications Regarding this RFP

All communications concerning this RFP should be directed to the Buyer listed on the cover page. All questions regarding this RFP should be submitted in writing via e-mail to the Buyer at snelson@panynj.gov. The Buyer is authorized only to direct the attention of prospective Proposers to various portions of this RFP so that they may read and interpret such portions themselves.

Neither the Buyer nor any other employee of the Port Authority is authorized to interpret the provisions of this RFP or give additional information as to its requirements. If interpretation or other information is required, it will be communicated to Proposers by written addenda and such writing shall form a part of this RFP.

G. Proposal Acceptance or Rejection

Acceptance shall be only by mailing to or delivering at the office designated by the Proposer in its proposal, a notice in writing signed by an authorized representative on behalf of the Port Authority specifically stating that the proposal is accepted or by execution of an agreement covering the subject matter of this RFP signed by authorized representatives of the Port Authority and the Proposer. No other act of the Port Authority, its Commissioners, officers, agents, representatives, or employees shall constitute acceptance of a proposal. Rejection of a proposal shall be only by either (a) a notice in writing specifically stating that the proposal is not accepted, signed by an authorized representative of the Port Authority and mailed to or delivered to the Proposer at the office designated in the Proposal, or (b) omission of the Port Authority to accept the proposal within 180 days after the Proposal Due Date. No other act of the Port Authority, its Commissioners, officers, agents, representatives or employees shall constitute rejection of a proposal.

H. Union Jurisdiction

Proposers are advised to ascertain whether any union now represented or not represented at the facility will claim jurisdiction over any aspect of the operations to be performed hereunder and their attention is directed to the Section of this RFP entitled "Harmony" included in the "Standard Contract Terms and Conditions" hereunder.

I. City Payroll Tax

Proposers should be aware of the payroll tax imposed by the:

- a. City of Newark, New Jersey for services performed in Newark, New Jersey;
- b. City of New York, New York for services performed in New York, New York; and
- c. City of Yonkers, New York for services performed in Yonkers, New York.

These taxes, if applicable, are the sole responsibility of the Contractor. Proposers should consult their tax advisors as to the effect, if any, of these taxes. The Port Authority provides this notice for informational purposes only and is not responsible for either the imposition or administration of such taxes. The Port Authority exemption set forth in the Paragraph entitled "Sales or Compensating Use Taxes", in the "Standard Contract Terms and Conditions" included herein, does not apply to these taxes.

J. Pre-Proposal Meeting(s)/Site Inspection(s)

A Pre-Proposal Meeting is scheduled for Thursday, July 24, 2014 at 10:00am. Interested Proposers will meet in the Office of Medical Services Conference Room at 233 Park Avenue South, 8th Floor, New York, New York 10003.

Attendees interested in attending shall RSVP to Robin Martin at 212-435-2664 or via email at rmartin@panynj.gov no later than 12:00 noon of the business day preceding the scheduled date of the pre-proposal meeting noted on the front cover to confirm their attendance and/or receive traveling directions.

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.

NOTE: PHOTO ID REQUIRED to attend the meeting.

For security reasons one form of valid photo ID will be required for attendance at this meeting. No one without valid ID will be admitted.

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.

K. Available Documents

Certain documents, specified below, will be made available for examination by Proposers at the Pre-Proposal meeting or by contacting Paulette Counts, Monday through Friday, between the hours of 8:30 a.m. and 4:30 p.m.

These documents were not prepared for the purpose of providing information for Proposers on this RFP but they were prepared for other purposes, such as for other contracts or for design purposes for this or other contracts, and they do not form a part of this RFP. The Port Authority makes no representation or guarantee as to, and shall not be responsible for, their accuracy, completeness or pertinence, and, in addition, shall not be responsible for inferences or conclusions drawn therefrom. They are made available to Proposers merely for the purpose of providing them with such information, whether or not such information may be accurate, complete, pertinent or of any value to Proposers.

Said documents are as follows:

1. Urine Specimen Collection for Drug and Breath Alcohol Testing – Three (3) Year Requirements Contract. Contract #4600009793; Purchase Order #4500064722.
2. Urine Specimen Collection for Drug and Breath Alcohol Testing – Six (6) Month Requirements Contract. Contract #4600009914; Purchase Order #4500065022.

L. Additional Proposer Information

Prospective Proposers are advised that additional vendor information, including, but not limited to forms, documents and other information, including M/WBE Participation Plan Submission Forms and protest procedures, may be found on the Port Authority website at:

<http://www.panynj.gov/business-opportunities/become-vendor.html>.

M. Contractor Staff Background Screening

The Contractor awarded this contract will be required to have its staff, and any subcontractor's staff working under this Contract, authorize the Authority or its designee to perform background checks. Such authorization shall be in a form acceptable to the Authority. The Contractor (and subcontractor) may also be required to use an organization designated by the Authority to perform the background checks. The cost for said background checks for staff that pass and are granted a credential shall be reimbursable to the Contractor (and its subcontractors) as an out-of-pocket expense as provided herein. Staff that are rejected for a credential for any reason are not reimbursable.

As of January 29, 2007, the Secure Worker Access Consortium (S.W.A.C.) is the only Port Authority approved provider to be used to conduct background screening, except as otherwise required by federal law and/or regulation. Information about S.W.A.C., instructions, corporate enrollment, online applications, and location of processing centers can be found at <http://www.secureworker.com>, or S.W.A.C. may be contacted directly at (877)522-7922.

2. SCOPE OF WORK

The full Scope of Work is set forth in detail in Attachment B, Part II.

The Proposer must demonstrate relevant, successful experience in performing Federal, Non-Federal, and Law Enforcement Officer urine specimen collections for drug tests and breath alcohol tests (in accordance with 49 CFR Parts 40, 219, and 382) on site at various Port Authority and PATH facilities for programs similar in size, scope, and complexity to the requirements of this RFP. The Proposer shall demonstrate experience in implementing and managing urine specimen collection and breath alcohol testing services on site twenty-four (24) hours a day seven (7) days a week, including holidays, and demonstrated capability to respond to emergency ("on call") testing situations and initiate testing at any PA/PATH facility listed in Attachment H. within 2 hours of notification in the Port District or NY/NJ metropolitan area.

3. PROPOSER PREREQUISITES

Only Proposers who can demonstrate that they comply with the following should submit proposals as only proposals from such Proposers will be considered:

- A. The Proposer shall have had at least three (3) years of experience prior to the date of the submission of its proposal in the collection of urine specimens for drug testing and breath alcohol testing for safety sensitive personnel covered by the United States Department of Transportation (DOT) guidelines and regulations (in accordance with 49 CFR Parts 40, 219, and 382) as well as for non-safety sensitive personnel covered by company policy/agreements, using DOT guidelines and regulations. The Proposer may fulfill this prerequisite if the Proposer can demonstrate to the satisfaction of the Port Authority that the persons or entities owning and controlling the Proposer have had a cumulative total of at least three (3) year(s) of experience prior to the date of the submission of its proposal in the collection of urine specimens for drug testing and breath alcohol testing for safety sensitive personnel covered by the DOT guidelines and regulations as well as for non-safety sensitive personnel covered by company policy/agreements using DOT guidelines and regulations. The Proposer shall have actually engaged in providing these services to firms with a highly unionized environment.

- B. During the time period stated in (A) above, the Proposer shall demonstrate satisfactory performance of at least one (1) contract for similar services of similar scope.

- C. In the event a Proposal is submitted by a joint venture, the foregoing prerequisites will be considered with respect to such Proposal as follows: The prerequisite in subparagraph (A) and (B) above, will be considered satisfied if the joint venture itself, or any of its participants individually, can meet the requirements. If a joint venture which has not been established as a distinct legal entity submits a bid, it and all participants in the joint venture shall be bound jointly and severally and each such participant in the joint venture shall execute the bid and do each act and thing required by this RFP. On the original bid and wherever else the Proposer's name would appear, the name of the joint venture Proposer should appear if the joint venture is a distinct legal entity. If the Proposer is a common law joint venture, the names of all participants should be listed followed by the words "acting jointly and severally". All joint venture Proposers must provide documentation of their legal status.

All Proposers must submit supporting documentation that they meet the above prerequisites when submitting its proposal.

References, cited as documentation for the above Prerequisites, must appear in Attachment C, the Proposer Reference Form.

Furnishing this solicitation document to Proposers does not imply that the Port Authority has made a determination that the Proposers have met the Prerequisite or have otherwise been deemed qualified to perform the services. In addition, a determination that a Proposer has met the Prerequisites is no assurance that it will be

deemed qualified in connection with other Proposal requirements included herein.

4. FINANCIAL INFORMATION

The Proposer will be required to demonstrate that it is financially capable of performing the contract resulting from this RFP ("Contract"). The determination of the Proposer's financial qualifications and ability to perform this Contract will be in the sole discretion of the Port Authority. The Proposer shall submit, with its proposal, the following:

- A. (1) Certified financial statements, including applicable notes, reflecting the Proposer's assets, liabilities, net worth, revenues, expenses, profit or loss and cash flow for the most recent year or the Proposer's most recent fiscal year.
- (2) Where the certified financial statements in (1) above are not available, then reviewed statements from an independent accountant setting forth the aforementioned information shall be provided.
- (3) Where the statements submitted pursuant to subparagraphs (1) and (2) aforementioned do not cover a period which includes a date not more than forty-five 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.
- B. 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 for completion, and the name of an individual most familiar with the Proposer's work on these jobs.
- C. The name and address of the Proposer's banking institution, chief banking representative handling the Proposer's account, the Proposer's Federal Employer Identification Number (i.e., the number assigned to firms by the Federal Government for tax purposes), the Proposer's Dun and Bradstreet number, if any, the name of any credit service to which the Proposer furnished information and the number, if any, assigned by such service to the Proposer's account.

5. EVALUATION CRITERIA AND RANKING

All proposals will be reviewed by the Port Authority to determine if they adhere to the format required in this RFP, if they contain all required submissions and if the Proposer meets the prerequisites required for submission of a Proposal. For Proposals meeting such requirements, the following criteria, set forth in order of importance, will be utilized in the evaluation of proposals.

1. Cost of Proposal

The overall cost of service and the degree and extent to which the proposal is cost effective to the Port Authority.

2. Technical Experience and Experience of Proposer

The extent and quality of relevant successful experience the Proposer has in performing federal, non-federal, and law enforcement urine specimen collections for drug tests and breath alcohol tests (in accordance with 49 CFR Parts 40, 219, and 382) on site at client company's facilities for programs similar in size, scope, and complexity to the requirements of this RFP. The extent of the Proposer's experience in implementing and managing urine specimen collection and breath alcohol testing services on site twenty-four (24) hours a day, seven (7) days a week, and demonstrated capability to respond to emergency ("on-call") testing situations and initiate testing within two (2) hours of notification in the Port District or NY/NJ metropolitan area. The experience and qualifications of the management and staff proposed to be assigned to provide services.

3. Management Approach

The quality and responsiveness of the Proposer's approach to the services specified herein. The quality and effectiveness of the Proposer's response to the proposal submission requirements, including consideration of M/WBE subcontracting plan, on site-management plans and work plan for this Contract, and proposed quality assurance/quality control program addressing how the Proposer will ensure compliance with the Contract requirements.

4. Background Check Plan

The Proposer must submit a Background Check plan in accordance with this document, which will be considered on a "pass/fail" basis.

6. M/WBE SUBCONTRACTING PROVISIONS

The Port Authority has a long-standing practice of making its business opportunities available to Minority Business Enterprises (MBEs) and Women-Owned Businesses (WBEs) and has taken affirmative steps to encourage such firms to seek business opportunities with the Port Authority. The successful Proposer will use good faith efforts to provide for meaningful participation by the Port Authority certified M/WBEs as defined in this document, in the purchasing and subcontracting opportunities associated with this contract, including purchase of equipment, supplies and labor services.

Good faith efforts include 1) dividing the services and materials to be procured into small portions where feasible, 2) giving reasonable advance notice of specific subcontracting and purchasing opportunities to such firms as may be appropriate, 3) soliciting services and materials from M/WBEs, which may be certified by the Port

Authority and 4) insuring that provision is made for timely progress payments to the M/WBEs.

The Port Authority has a list of certified M/WBE firms, which are available to Proposers at their request. The Port Authority makes no representation as to the qualifications and ability of these firms to perform under this contract. The Proposer may use firms which are not on the list but will be required to submit, to the Port Authority's Office of Business Diversity and Civil Rights (OBDCR) for certification, the names of M/WBE firms it proposes to use. Only Port Authority certified M/WBE firms may be considered to meet the goals. For inquiries and assistance, please contact OBDCR at (212) 435-7819.

To the maximum extent feasible and consistent with the Proposer's exercise of good business judgment, the Proposer shall make a good faith effort to include 12% of the total contract price for participation by MBE's and 5% of the total contract price for participation by WBE's in all procurement, subcontracting and ancillary service opportunities associated with this contract. The Proposer shall submit an M/WBE Participation Plan, (Plan) which shall be evaluated and rated for this procurement. The Plan shall consist of the following:

- Previous M/WBE Participation: Describe any previous or current M/WBE participation which the Proposer has sponsored.
- Scope of Work: Describe the specific scope of work the M/WBE's will perform.
- Identification of M/WBE's: Provide the name and address of any M/WBE included in the Plan. If none are identified, describe the process for selecting participant firms.
- Level of Participation: Indicate the percentage of M/WBE participation expected to be achieved with the arrangement described in the Plan.

Minority Business Enterprise (MBE) - shall mean a business entity which is at least 51% owned and controlled by one or more members of one or more minority groups, or, in the case of a publicly held corporation, at least 51% of the stock of which is owned by 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.

"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 Mexican, Puerto Rican, 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) Native American 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.

Women-Owned Business Enterprise (WBE) - shall mean a business enterprise which is at least 51% owned by one or more women, or, in the case of a publicly held corporation, at least 51% 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 or resident aliens.

The Contractor shall use good faith efforts to achieve participation equivalent to 12% of the total Contract price for MBEs and 5% of the total Contract price for WBEs.

Good faith efforts to include participation by M/WBEs shall include, but not be limited to the following:

- 1) Dividing the services and materials to be procured into small portions where feasible;
- 2) Giving reasonable advance notice of specific subcontracting and purchasing opportunities to such firms as may be appropriate;
- 3) Soliciting services and materials from M/WBEs, which are certified by the Port Authority;
- 4) Ensuring that provision is made for timely progress payments to the M/WBEs and;
- 5) Observance of reasonable commercial standards of fair dealing in the respective trade or business.

Proposers are directed to use form PA3749B or PA3749C as the recording mechanism for the M/WBE participation Plan, annexed hereto as Attachment D or may be downloaded at <http://www.panynj.gov/business-opportunities/become-vendor.html>

The M/WBE Plan submitted by the Contractor to the Port Authority shall contain, at a minimum, the following:

- Identification of M/WBE's: Provide the names and addresses of all M/WBEs included in the Plan. If none are identified, describe the process for selecting participant firms in order to achieve the good faith goals under this Contract.
- Level of Participation: Indicate the percentage of M/WBE participation expected to be achieved with the arrangement described in the Plan.

- **Scope of Work:** Describe the specific scope of work the M/WBE's will perform.
- **Previous M/WBE Participation:** Describe any previous or current M/WBE participation, which the Proposer has utilized in the performance of its contracts.

All M/WBE subcontractors listed on the M/WBE Participation Plan must be certified by the Port Authority in order for the Contractor to receive credit toward the M/WBE goals set forth in this Contract. Please go to <http://www.panynj.gov/business-opportunities/supplier-diversity.html> to search for M/WBEs by a particular commodity or service. The Port Authority makes no representation as to the financial responsibility of such firms or their ability to perform Work under this Contract.

Proposers shall include their M/WBE Participation Plan with their proposals, to be reviewed and approved by the Authority's Office of Business Diversity and Civil Rights (OBDCR).

Proposers may request a waiver of the M/WBE participation goals set forth in this Contract by providing with its proposal, information in accordance with this provision and the provision entitled "M/WBE Good Faith Participation" in the Standard Terms and Conditions of this Contract.

If the Contractor wishes to subcontract a portion of the Work through a firm not listed in the Directory, but which the Contractor believes should be eligible because it is (1) an M/WBE, as defined above and (2) competent to perform portions of the Work, the Contractor shall submit an M/WBE Uniform Certification Application to the Port Authority of New York and New Jersey, Office of Business Diversity and Civil Rights (OBDCR), 233 Park Avenue South, 4th Floor, New York, NY 10003. The application is available online at <http://www.panynj.gov/business-opportunities/sd-become-certified.html>. In addition, to update your certification file and to advise OBDCR of changes to any information, please email these changes to certhelp@panynj.gov. Credit toward applicable goals will be granted only to Port Authority certified vendors. For more information about M/WBE Programs, call (212) 435-7888.

7. CERTIFICATION OF RECYCLED MATERIALS PROVISION

Proposers shall submit, with their proposal, Attachment F the Certified Environmentally Preferable Products / Practices Form attesting that the products or items offered by the Proposer contain the minimum percentage of post-consumer recovered material in accordance with the most recent guidelines issued by the United States Environmental Protection Agency (EPA), or, for commodities not so covered, the minimum percentage of post-consumer recovered materials established by other applicable regulatory agencies.

Recycling Definitions:

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

- a. "Recovered Material" shall be defined as any waste material or by-product that has been recovered or diverted from solid waste, excluding those materials and by-products generated from, and commonly reused within, an original manufacturing process.
- b. "Post-consumer Material" shall be defined as any material or finished product that has served its intended use and has been discarded for disposal or recovery having completed its life as a consumer item. "Post-consumer material" is included in the broader category of "Recovered Material".
- c. "Pre-consumer Material" shall be defined as any material or by-product generated after the manufacture of a product but before the product reaches the consumer, such as damaged or obsolete products. Pre-consumer Material does not include mill and manufacturing trim, scrap, or broken material that is generated at a manufacturing site and commonly reused on-site in the same or another manufacturing process.
- d. "Recycled Product" shall be defined as a product that contains the highest amount of post-consumer material practicable, or when post-consumer material is impracticable for a specific type of product, contains substantial amounts of Pre-consumer Material.
- e. "Recyclable Product" shall be defined as the ability of a product and its packaging to be reused, reconditioned for use, or recycled through existing recycling collection programs.
- f. "Waste Reducing Product" shall be defined as any product that will result in less waste generated due to its use rather than another product designed to serve the same function with a greater waste generation rate. This shall include, but not be limited to, those products that can be reused, refilled or have a longer life expectancy and contain a lesser amount of toxic constituents.

8. PROPOSAL SUBMISSION REQUIREMENTS

In order to expedite the evaluation of proposals, the Proposer's response to this RFP shall follow the format and order of items, using the same paragraph identifiers, as set forth below.

A. Letter of Transmittal

The Proposer shall submit a letter on its letterhead, signed by an authorized representative, stating its experience and qualifications in meeting the requirements of this RFP. This letter shall include a statement on whether the Proposer is submitting a proposal as a single entity, a joint venture, or is partnering with another firm in a prime/subcontracting relationship. In all cases,

information required for a single entity is required for each participant in a joint venture.

The Letter of Transmittal shall contain:

- (i) Name and address of the Proposer and an original signature on the Letter of Transmittal by an authorized representative on behalf of the Proposer;
- (ii) Name(s), title(s) and telephone number(s) of the individual(s) who are authorize to negotiate and execute the Contract;
- (iii) Name, title and telephone number of a contact person to which the Port Authority can address questions or issues related to this RFP;
- (iv) Name and address of proposed subcontractors, if any;
- (v) If a corporation: (a) a statement of the names and residences of its officers, and (b) a copy of its Certificate of Incorporation, with a written declaration signed by the secretary of the corporation, with the corporate seal affixed thereto, that the copy furnished is a true copy of the Certificate of Incorporation as of the date of the opening of the Proposals;

If a partnership: a statement of the names and residences of its principal officers, indicating which are general and which are special partners;

If an individual: a statement of residence;

If a joint venture: information on each of the parties consistent with the information requested above; if the Contract is awarded to a common law joint venture , each member will be jointly and severally liable under the Contract.

B. Executive Summary

The Proposer shall submit a summary presenting the major features of its proposal and how the proposal satisfies the requirements contained in this RFP, as well as the special competencies and expertise of the Proposer to meet the requirements of this RFP.

C. Agreement on Terms of Discussion

The Proposer shall submit a copy of the "Agreement on Terms of Discussion," signed by an authorized representative of the Proposer. The Agreement format is included as Attachment A and shall be submitted by the Proposer without any alterations or deviations. Any Proposer who fails to sign the Port Authority's

"Agreement on Terms of Discussion" will not have its proposal reviewed. If the Proposer is a joint venture, an authorized representative of each party must sign the Agreement.

D. Certifications With Respect to the Contractor's Integrity Provisions

The Proposer, by signing the Letter of Transmittal, makes the certifications in the "Contractor's Integrity Provisions," included as *Attachment B, Part IV, Standard Contract Terms and Conditions* of this RFP. If the Proposer cannot make any such certifications, it shall enclose an explanation of that inability.

E. Documentation of Proposer Prerequisites

The Proposer shall submit documentation to demonstrate that it meets all prerequisites, if any, included herein.

F. Proposal

The Proposer must submit a proposal that details and clearly describes its experience and capability to perform the urine collection/breath alcohol testing services described in this RFP, its approach to such work and the cost of such work to the Port Authority. At a minimum, the proposal shall address the following:

1. Cost of Proposal

The Proposer shall complete the Cost Proposal Form attached in Part III of Attachment B. Grand total estimates should be entered at the bottom for each year of the Contract.

2. Technical Experience and Experience of Proposer

- i. The Proposer shall submit a listing and description of all relevant urine specimen collection for drug testing and breath alcohol testing contracts in accordance with 49 CFR Parts 40, 219, and 382 (Federal and non-Federal testing), which were performed by or are currently being performed by the Proposer within the last three (3) years. For each contract listed, the Proposer shall provide the name and address of the contracting party; the location(s) where the work was performed; the duration of the contract; approximate dollar value of the contract; the annual staff hours of full and part time labor expended in the performance of the contract; a summary of the type of work performed and the approximate number of urine specimen collections and breath alcohol tests conducted per year; and the names, addresses and telephone numbers of the owner's representatives familiar with the work that the Port Authority/PATH may contact.

- ii. The Proposer shall provide a statement indicating the qualifications and experience of the managerial representative(s)/supervisory personnel employed by the firm proposed to be dedicated to the contract, including their length of service with the firm, the anticipated function of each person listed; including a summary of the number of occasions they had to provide testimony regarding urine collection or breath alcohol testing. The resume(s) of the individual(s) who are being recommended for this position should be included in the Proposal.
- iii. Proposer shall provide a statement indicating the qualifications and experience of the personnel employed by the firm proposed to be dedicated to this Contract for collecting urine specimens and performing breath alcohol tests on evidential breath testing devices. The statement should include their length of service with the firm, the anticipated program/facility assignment and the relevant experience of each person listed; including a summary of the number of occasions they had to provide testimony regarding urine collection of breath alcohol testing. The statement should be accompanied with photocopies of relevant licenses, certifications or other documentation describing training (including any refresher training) relevant to urine specimen collection, breath alcohol testing and the federal regulations, which relate to DOT testing.

3. Management Approach

- i. The Proposer should provide details of its programs for staffing, training and orientation of newly hired employees intended to meet requirements of this RFP. Newly hired employees must be approved by Port Authority management responsible for the drug and alcohol testing program.
- ii. The Proposer should submit a plan for servicing each of the Port Authority/PATH testing programs concurrently and completing all random and follow-up collections/tests within the required testing periods.
- iii. The Proposer should also describe its proposed plan for servicing each of the collection sites, on an on-call basis twenty-four (24) hours a day, seven (7) days a week within the required two (2) hours from notification response time. The Proposer should include a description of the call system protocols, what equipment or personnel will be utilized to ensure that the Contractor's personnel can be reached immediately and where collectors/breath alcohol technicians (BATs) will be located to ensure their ability to respond within the required response time. The Proposer should also include a description of the Proposer's experience in responding to on-call situations (within the New York/New Jersey metropolitan area) and include a list of references who can attest to the Proposer's on call performance.

- iv. Proposer should provide a step by step checklist and/or a complete narrative description of how its collectors conduct a specimen collection, which conforms with 49 CFR Parts 40, 219, and 382 and how its BATs are trained to conduct a breath alcohol test on the Intoxilyzer 240, an evidential breath testing device, which conforms with 49 CFR 40.
- v. The Proposer should describe its quality assurance/quality control programs, including provisions to ensure that: collections and tests are conducted and documented according to applicable regulations, policies and procedures; and specimens and related chain of custody paperwork are handled and shipped properly.
- vi. The Proposer should address how it plans to ensure successful program management/supervision, including where supervisory staff will be located and how they will provide guidance to the collector/BAT; and what performance standards they will use to determine management and execution.
- vii. The Proposer should include its M/WBE sub-contracting plan.

4. Background Check Plan:

The Proposer shall submit a Contractor Identity Check/Background Screening Plan, which demonstrates how the Proposer will ensure that only employees who were successfully prescreened and properly credentialed perform the services herein. This Plan shall be applicable to all years of the Contract and shall include, but not be limited to, the following:

- i. The length of time researched for the identity check/background screening on new hires, which shall be a minimum of ten (10) years of employment history or verification of what an employee documented they have done in the last ten (10) years preceding the date of the investigation, resources utilized to perform this, and the frequency at which it is performed on current employees.

G. Acknowledgment of Addenda

If any Addenda are posted or sent as part of this RFP, the Proposer shall complete, sign and include with its Proposal the addenda form(s). In the event any Proposer fails to conform to these instructions, its proposal will nevertheless be construed as though the Addenda had been acknowledged.

If the Proposer downloaded this RFP document, it is the responsibility of the Proposer to periodically check the Port Authority website at <http://www.panynj.gov/business-opportunities/bid-proposal-advertisements.html>

and download any addenda that might have been issued in connection with this solicitation.

H. Acceptance of Standard Contract Terms and Conditions

The Port Authority has attached to this RFP as Attachment B, Standard Contract Terms and Conditions governing the Contract. The Proposer is expected to agree with these Standard Contract Terms and Conditions. However, if the Proposer has any specific exceptions, such exceptions should be set forth in a separate letter included with its response to this RFP. After the proposal due date, the Proposer will be precluded from raising any exceptions unless such exceptions are justified by and directly related to substantive changes in the business or technical requirements and are agreed to by the Proposer and the Port Authority.

I. M/WBE Plan

The Proposer shall submit an M/WBE Plan in accordance with the M/WBE Subcontracting Provisions hereunder.

9. CONDITIONS FOR THE SUBMISSION OF A PROPOSAL

In addition to all other requirements of this RFP, the Proposer agrees to the following conditions for the submission of its proposal.

A. Changes to this RFP

At any time, in its sole discretion, the Port Authority may by written addenda, modify, correct, amend, cancel and/or reissue this RFP. If an addendum is issued prior to the date proposals are due, it will be provided to all parties in the medium in which the parties obtained the RFP. If an addendum is issued after proposals have been received, the addendum will be provided only to those whose proposals remain under consideration at such time.

B. Proposal Preparation Costs

The Port Authority shall not be liable for any costs incurred by the Proposer in the preparation, submittal, presentation, or revision of its proposal, or in any other aspect of the Proposer's pre-contract activity. No Proposer is entitled to any compensation except under an agreement for performance of services signed by an authorized representative of the Port Authority and the Proposer.

C. Disclosure of Proposal Contents / Use of Ideas and Materials

Proposal information is not generally considered confidential or proprietary. All information contained in the proposal is subject to the "Agreement on Terms of Discussion" attached hereto as Attachment A.

D. Ownership of Submitted Materials

All materials submitted in response to or in connection with this RFP shall become the property of the Port Authority. Selection or rejection of a Proposal shall not affect this right.

E. Subcontractors

If a Proposer intends to use subcontractor(s) the Proposer must identify in its proposal the names of the subcontractor(s) and the portions of the work the subcontractor(s) will perform.

F. Conflict of Interest

If the Proposer or any employee, agent or subcontractor of the Proposer may have a possible conflict of interest, or may give the appearance of a possible conflict of interest, the Proposer shall include in its 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 from any source could create a conflict of interest or give the appearance of a conflict of interest. The Port Authority's determination regarding any questions of conflict of interest shall be final.

G. Authorized Signature

Proposals must be signed by an authorized corporate officer (e.g., President or Vice President), General Partner, or such other individual authorized to bind the Proposer to the provisions of its proposal and this RFP.

H. References

The Port Authority may consult any reference familiar with the Proposer regarding its current or prior operations and projects, financial resources, reputation, performance, or other matters. Submission of a proposal shall constitute permission by the Proposer for the Port Authority to make such inquiries and authorization to third parties to respond thereto.

I. Evaluation Procedures and Negotiation

Only Proposers which meet the prerequisites, if any, may have their proposals evaluated based on the evaluation criteria set forth in this RFP. The Port Authority may use such procedures that it deems appropriate to evaluate such proposals. The Port Authority may elect to initiate contract negotiations with one or more Proposers including negotiation of costs/price(s) and any other term or condition, including modifying any requirement of this RFP. The option of whether or not to initiate contract negotiations rests solely with the Port Authority.

J. Taxes and Costs

Purchases of services and tangible personal property by the Port Authority in the States of New York and New Jersey are generally exempt from state and local sales and compensating use taxes, and from most federal excises (Taxes). All costs associated with the Contract must reflect this exemption and be stated in U.S currency.

K. Most Advantageous Proposal/No Obligation to Award

The Port Authority reserves the right to award the Contract to other than the Proposer proposing the lowest price. The Contract will be awarded to the Proposer whose proposal the Port Authority believes, in its sole discretion, will be the most advantageous to the Port Authority. Neither the release of this RFP nor the acceptance of any response thereto shall compel the Port Authority to accept any proposal. The Port Authority shall not be obligated in any manner whatsoever to any Proposer until a proposal is accepted by the Port Authority in the manner provided in the Section of this RFP entitled "Proposal Acceptance or Rejection."

L. Multiple Contract Awards

The Port Authority reserves the right to award multiple Contracts for the products, work and/or services that are the subject matter of this RFP and Proposers are hereby given notice that they may not be the Port Authority's only contractor for such products, work and/or services.

M. Right to Extend Contract

If this is a proposal for a contract for a term of years, including specified options for renewal, the Port Authority reserves the additional right to extend the contract term for an additional one (1) year option and a one hundred and twenty (120) day Extension Period, upon the same terms and conditions of the original Contract negotiated between the Port Authority and the successful Proposer.

N. Rights of the Port Authority

- i. The Port Authority reserves all its rights at law and equity with respect to this RFP including, but not limited to, the unqualified right, at any time and in its sole discretion, to change or modify this RFP, to reject any and all proposals, to waive defects or irregularities in proposals received, to seek clarification of proposals, to request additional information, to request any or all Proposers to make a presentation, to undertake discussions and modifications with one or more Proposers, or to negotiate an agreement with any Proposer or third person who, at any time, subsequent to the deadline for submissions to this

RFP, may express an interest in the subject matter hereof, to terminate further participation in the proposal process by a Proposer or to proceed with any proposal or modified proposal, which in its judgment will, under all circumstances, best serve the Port Authority's interest. The Port Authority may, but shall not be obliged to, consider incomplete proposals or to request or accept additional material or information. The holding of any discussions with any Proposer shall not constitute acceptance of a proposal, and a proposal may be accepted with or without discussions.

- ii. No Proposer shall have any rights against the Port Authority arising from the contents of this RFP, the receipt of proposals, or the incorporation in or rejection of information contained in any proposal or in any other document. The Port Authority makes no representations, warranties, or guarantees that the information contained herein, or in any addenda hereto, is accurate, complete, or timely or that such information accurately represents the conditions that would be encountered during the performance of the contract. The furnishing of such information by the Port Authority shall not create or be deemed to create any obligation or liability upon it for any reason whatsoever and each Proposer, by submitting its proposal, expressly agrees that it has not relied upon the foregoing information, and that it shall not hold the Port Authority liable or responsible therefor in any manner whatsoever. Accordingly, nothing contained herein and no representation, statement or promise, of the Port Authority, its directors, officers, agents, representatives, or employees, oral or in writing, shall impair or limit the effect of the warranties of the Proposer required by this RFP or Contract and the Proposer agrees that it shall not hold the Port Authority liable or responsible therefor in any manner whatsoever.
- iii. At any time and from time to time after the opening of the proposals, the Port Authority may give oral or written notice to one or more Proposers to furnish additional information relating to its proposal and/or qualifications to perform the services contained in this RFP, or to meet with designated representatives of the Port Authority. The giving of such notice shall not be construed as an acceptance of a proposal. Information shall be submitted within three (3) calendar days after the Port Authority's request unless a shorter or longer time is specified therein.

O. No Personal Liability

Neither the Commissioners of the Port Authority, nor any of them, nor any officer, agent or employee thereof shall be charged personally with any liability by a Proposer or another or held liable to a Proposer or another under any term or provision of this RFP or any statements made herein or because of the submission or attempted submission of a proposal or other response hereto or otherwise.

ATTACHMENT A

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 B

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ATTACHMENT B

PART I – CONTRACT SPECIFIC TERMS AND CONDITIONS.

1. General Agreement

Subject to all of the terms and conditions of this Contract, the undersigned (hereinafter “Contractor”) hereby offers and agrees to provide all the necessary supervision, personnel, equipment, materials and all other things necessary to perform the Work required by this Contract in Part II, (the “Specifications”), at the location(s) listed and fully set forth in the Specifications, and do all other things necessary or proper therefor or incidental thereto, all in strict accordance with the provisions of the Contract Documents and any future changes therein; and the Contractor further agrees to assume and perform all other duties and obligations imposed upon it by this Contract.

In addition, all things not expressly mentioned in the Specifications but involved in the carrying out of their intent and in the complete and proper execution of the matters referred to in and required by this Contract are required by the Specifications, and the Contractor shall perform the same as though they were specifically delineated, described and mentioned therein.

2. Duration

- a) The initial term of this Contract (hereinafter “Base Term”) shall commence on or about October 27, 2014, on the specific date set forth in the Port Authority’s written notice of bid acceptance (hereinafter called the “Commencement Date”), and unless otherwise terminated, revoked or extended in accordance with the provisions hereof, shall expire October 26, 2017.
- b) The Port Authority shall have the right to extend this Contract for an additional one-year period (hereinafter referred to as the “Option Period”) following the Expiration Date, upon the same terms and conditions subject only to adjustments of charges, if applicable to this Contract, as may be hereinafter provided in the paragraph entitled “Price Adjustments”. If the Port Authority elects to exercise the Option to extend this Contract then no later than thirty (30) days prior to the Expiration Date, the Port Authority shall send a notice that it is extending the Base Term of this Contract, and this Contract shall thereupon be extended for the applicable Option Period. If the Contract provides for more than one Option Period, the same procedure shall apply with regard to extending the term of this Contract for succeeding Option Periods.
- c) The Port Authority shall have the absolute right to extend the Base Term, or any Option Period, if exercised, for an additional period of up to one hundred and twenty (120) days subsequent to the Expiration Date of the Base Term, or the Expiration Date of the final exercised Option Period (hereinafter called the “Extension Period”), subject to the same terms and conditions as the previous contract period. The prices quoted by the Contractor for the previous contract

period shall remain in effect during this Extension Period without adjustment. If it so elects to extend this Contract, the Port Authority will advise the Contractor in writing that the term is so extended and stipulate the length of the extended term at least thirty (30) days prior to the expiration date of the previous contract period.

3. Payment

Subject to the provisions of this Contract, the Port Authority agrees to pay to the Contractor and the Contractor agrees to accept from the Port Authority as full and complete consideration for the performance of all its obligations under this Contract and as sole compensation for the Work performed by the Contractor hereunder, a compensation calculated from the actual quantities of services performed and the respective prices inserted by the Contractor in the Cost Proposal Form(s), forming a part of this Contract, exclusive of compensation under the clause hereof entitled "Extra Work". The manner of submission of all bills for payment to the Contractor by the Port Authority for Services rendered under this Contract shall be subject to the approval of the Manager in all respects, including, but not limited to, format, breakdown of items presented and verifying records. All computations made by the Contractor and all billing and billing procedures shall be done in conformance with the following procedures:

- a) Payment shall be made in accordance with the prices for the applicable service (during the applicable Contract year) as they appear on the Cost Proposal Form(s), as the same may be adjusted from time to time as specified herein, minus any deductions for services not performed and/or any liquidated damages to which the invoice may be subject and/or any adjustments as may be required pursuant to increases and decreases in areas or frequencies, if applicable. All Work must be completed within the time frames specified or as designated by the Manager.
- b) The Contractor shall submit to the Manager by the fifth day of each month following the month of commencement of this Contract and on or by the fifth day of each month thereafter (including the month following the termination, revocation or expiration of this Contract) a complete and correct invoice for the Work performed during the preceding month accompanied by such information as may be required by the Manager for verification. The invoice must show the Contractor's Federal Tax Identification Number. Payment will be made within thirty (30) days of Port Authority verification of the invoice. Invoices shall be prepared separately for each of the following as indicated below:

PATH: Invoices for services rendered for PATH shall be forwarded to: Barbara Iorio, PATH Corporation, PATH Director's Office, One PATH Plaza, 10th Fl., Jersey City, NJ 07306. Invoices shall reference employee badge numbers, date of collection and type of service rendered as per the Cost Proposal Form.

Port Authority Operation & Maintenance: Invoices for services rendered for O&M shall be forwarded to: Paulette Counts, Port Authority of New York and New Jersey, Office of Medical Services, 233 Park Avenue South, 8th Fl., New York, NY 10003, and shall be submitted on a monthly basis. Invoices shall

reference employee ID numbers, date of collection and type of service rendered as per the Cost Proposal Form.

Police: Invoices for services rendered for Police shall be forwarded marked confidential to Drug Program Coordinator, Port Authority of New York and New Jersey, Public Safety Department, 5 Marine View Plaza, Suite 320, Hoboken, NJ 07030, and shall be submitted on a monthly basis. Invoices shall reference employee ID numbers, date of collection and type of service rendered as per the Cost Proposal Form.

- c) No certificate, payment, acceptance of any Work or any other act or omission of any representative of the Port Authority shall operate to release the Contractor from any obligation under or upon this Contract, or to estop the Port Authority from showing at any time that such certificate, payment, acceptance, act or omission was incorrect or to preclude the Port Authority from recovering any monies paid in excess of those lawfully due and any damage sustained by the Port Authority.
- d) In the event an audit of received invoices indicates that the correct sum due the Contractor for the relevant billing period is less than the amount actually paid by the Port Authority, the Contractor shall pay to the Port Authority the difference promptly upon receipt of the Port Authority's statement thereof. The Port Authority may, however, in its discretion elect to deduct said sum or sums from any subsequent monthly payments payable to the Contractor hereunder.

"Final Payment", as the term is used throughout this Contract, shall mean the final payment made for services rendered in the last month of the Base Term or any extended term. However should this Contract be terminated for any reason prior to the last month of the Base Term or any extended term, then Final Payment shall be the payment made for services rendered in the month during which such termination becomes effective. The Contractor's acceptance of Final Payment shall act as a full and complete release to the Port Authority of all claims of and of all liability to the Contractor for all things done or furnished in connection with this Contract and for every act and neglect of the Port Authority and others relating to or arising out of this Contract, including claims arising out of breach of contract and claims based on claims of third persons. No payment, however, final or otherwise shall operate to release the Contractor from any obligations in connection with this Contract.

4. Price Adjustment

All Contract prices submitted by the Contractor and agreed to by the Port Authority, shall be applicable to three (3) years of the Base Term. For the Option Period that is applicable to this Contract and is exercised hereunder, (excluding the 120 day Extension Period as described in the paragraph entitled "Duration") the Port Authority shall adjust the compensation due to the Contractor utilizing the Consumer Price Index for all Urban Consumers; Series Id: CUURA101SA0L2; Not Seasonally Adjusted; New York-Northern New Jersey-Long Island, NY-NJ_CT-PA area; all

items less shelter; 1982-1984=100, published by the Bureau of Labor Statistics of the United States Department of Labor (hereinafter called the "Price Index").

For the first Option Period of the Contract, the Price Index shall be determined for the months of April 2016 and April 2017. The amounts payable to the Contractor in the final year of the Base Term shall be multiplied by a fraction, the numerator of which is the Price Index for April 2017 and the denominator of which is the Price Index for April 2016. The resulting products shall be the amounts payable to the Contractor in the first Option Period.

In the event of a change in the basis for the computation of the said Index or the discontinuance of its publication, such other appropriate index shall be substituted as may be agreed upon by the Authority and the Contractor as properly reflecting changes in the value of the current United States money in a manner similar to that established in the said Price Index. In the event of the failure of the parties to so agree, the Port Authority may select and use such index, as it seems appropriate. Notwithstanding the provisions of this section, in no event shall any adjustment hereunder be greater than three (3%) per annum.

The amounts payable to the Contractor during the 120-day Extension Period shall not be subject to adjustment.

If, after an adjustment referred to in this Section, the Index used for computing such adjustment shall be changed or adjusted, then the amounts payable to the Contractor for that period shall be recomputed. If such recomputation results in a smaller increase in the amount payable to such period, then after notification of the change or adjustment, the recomputed amounts shall be in effect and upon demand by the Port Authority, the Contractor shall refund to Port Authority excess amounts theretofore paid by Port Authority for such period.

5. Liquidated Damages

- a) The Contractor's obligations for the performance and completion of the Work within the time or times provided for in this Contract are of the essence of this Contract. In the event that the Contractor fails to satisfactorily perform all or any part of the Work required hereunder in accordance with the requirements set forth in the Specifications (as the same may be modified in accordance with provisions set forth elsewhere herein) then, inasmuch as the damage and loss to the Port Authority for such failure to perform includes items of loss whose amount will be incapable or very difficult of accurate estimation, the damages for such failure to perform shall be liquidated as follows:
 - i. In the event the Contractor fails to perform the Collection Services/Testing required and such failure on the part of the Contractor results in a collection not being performed, then, at the sole discretion of the Manager, liquidated damages in the sum of one hundred (\$100) dollars per incident will be assessed.

- ii. In the event the Contractor fails to perform the Collection Services/Testing required satisfactorily, then, at the sole discretion of the Manager, liquidated damages in the sum of one hundred (\$100) dollars per incident will be assessed. The Collection Services/Testing shall be re-performed, at no cost to the Port Authority, until the Manager is satisfied.
 - iii. In the event that, for any reason, the Contractor fails to maintain, provide or have available equipment, forms or documentation when required or requested by the Port Authority, or fails to submit any documentation, reports or records as required, the amount payable by the Port Authority to the Contractor hereunder shall be reduced by an amount equal to fifty (\$50) dollars per day multiplied by the number of days or fractions of days thereof the Contractor fails to maintain or provide or have available any documentation, reports or records, said amount or amounts to be deducted from any sums due and owing from the Port Authority to the Contractor hereunder as the Port Authority shall determine from time to time in its sole discretion.
 - iv. In the event the Contractor fails to respond to a request for Collection Services/Testing upon two (2) hours of notification by the Port Authority, then the amount payable to the Contractor under this Contract shall be reduced by \$200 per hour for each hour, or part thereof, past the response time required hereunder that the Contractor fails to provide the required Service.
- b) The Manager shall determine whether the Contractor has performed in a satisfactory manner and his/her determination shall be final, binding and conclusive upon the Contractor.
 - c) Failure of the Manager or the Port Authority to impose liquidated damages shall not be deemed Port Authority acceptance of unsatisfactory performance or a failure to perform on the part of the Contractor or a waiver of its remedies hereunder.
6. Insurance Procured by the Contractor

The Contractor shall take out, maintain, and pay the premiums on Commercial General Liability Insurance, including but not limited to premises-operations and products-completed operations, and independent contractors' coverage, with contractual liability language covering the obligations assumed by the Contractor under this contract, a policy of Professional Liability Insurance, and, *if vehicles are to be used* to carry out the performance of this contract, then the Contractor shall also take out, maintain, and pay the premiums on Automobile Liability Insurance covering owned, non-owned, and rented vehicles in the following minimum limits:

Commercial General Liability Insurance - \$1 million combined single limit per occurrence for bodily injury and property damage liability.

Automobile Liability Insurance - \$1 million combined single limit per accident for bodily injury and property damage liability.

Professional (Malpractice) Liability Insurance - \$2 million limit per occurrence.

In addition, other than professional liability, the liability policy(ies) shall name "The Port Authority of New York & New Jersey and its wholly owned entities" as additional insured, including but not limited to premises-operations, products-completed operations. Moreover, the Commercial General Liability Policy shall not contain any provisions for exclusions from liability other than provisions for 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 include cross-liability language providing severability of interests so that coverage will respond as if separate policies were in force for each insured.

The certificate of insurance and policies must contain the following wording for the above liability coverages:

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

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

The Port 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 results in an additional premium, The Port Authority, Risk Manager, Risk Management can consider such cost as an out-of-pocket expense.

Each policy above shall contain an endorsement that the policy may not be canceled, terminated, or modified without thirty (30) days' written notice to the Port Authority of New York and New Jersey, Att: Contract Administrator and to the Port Authority General Manager, Risk Management.

Within five (5) days after the award of this agreement or contract, the Contractor must submit an original certificate of insurance to the Port Authority, Att: Contract Administrator. This certificate of insurance MUST show evidence of the above insurance policy, including but not limited to the cancellation endorsement along with the agreement number. Upon request, the Contractor shall furnish to the Port Authority General Manager, a certified copy of each policy, including the premiums.

If at any time the above liability insurance should be canceled, terminated, or modified so that the insurance is not in effect as above required, then, if the Manager shall so direct, the Contractor shall suspend performance of the contract at the premises. If the contract is so suspended, no extension of time shall be due on account thereof. If the contract is not suspended (whether or not because of omission of the Manager to avoid 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 Contractor to the Authority.

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

The requirements for insurance procured by the Contractor shall not in any way be construed as a limitation on the nature or extent of the contractual obligations assumed by the Contractor under this contract. The insurance requirements are not a representation by the Authority as to the adequacy of the insurance to protect the Contractor against the obligations imposed on them by law or by this or any other Contract. [CITS#4531N]

7. Increase and Decrease in Areas or Frequencies

The Manager shall have the right, at any time and from time to time in their sole discretion, to increase or decrease the frequencies of all or any part of the services required hereunder and/or to add areas not described herein in the Specifications or remove areas or parts of areas which are hereunder so described. In the event the Manager decides to change any frequencies or areas such change shall be by written notice not less than five (5) days, said changes to be effective upon the date specified in said notice.

In the event of an increase or decrease in areas or frequencies, the Contractor's compensation will be adjusted to reflect such change in areas or frequencies utilizing the applicable Unit Price for such services (for the applicable Contract year) as set forth on the Cost Proposal Form(s).

In the event of a decrease, the Contractor shall not be entitled to compensation for Work not performed.

No such change in areas or frequencies will be implemented which results in a total increase or decrease in compensation that is greater than fifty percent (50%) of the Total Estimated Contract Price for the Base Term or, if changes are to be implemented during an Option Period, fifty percent (50%) for that Option Period. Any increases in frequencies or areas shall not constitute Extra Work and, as such, shall not be limited by the Extra Work provisions of this Contract.

8. Extra Work

The Contractor is required to provide separate materials, supplies, equipment and personnel for Extra Work when such is deemed necessary by the Manager. "Extra Work" as used herein shall be defined as work which differs from that expressly or impliedly required by the Specifications in their present form. Total Extra Work performed by the Contractor shall not exceed six percent (6%) of the Total Estimated Contract Price of this Contract for the entire Term of this Contract including extensions thereof, or six percent (6%) of the Total Estimated Contract Price of each Section if this Contract is awarded by separate Sections.

An increase in area or frequency does not constitute Extra Work, but shall be compensable based on the prices in the Cost Proposal Form(s).

The Contractor is required to perform Extra Work pursuant to a written order of the Manager expressly recognizing such work as Extra Work. If Lump Sum or Unit Price compensation cannot be agreed upon by the parties in writing prior to the start of Work, the Contractor shall perform such Extra Work and the Contractor's compensation shall be increased by the sum of the following amounts and such amounts only: (1) the actual net cost, in money, of the labor, and material, required for such Extra Work; (2) ten percent (10%) of the amount under (1) above; (3) such rental as the Manager deems reasonable for plant and equipment (other than small tools) required for such Extra Work; (4) if the Extra Work is performed by a subcontractor, an additional five percent (5%) of the sum of the amounts under (1) through (3) above.

As used in this numbered clause (and in this clause only):

"Labor" means laborers, mechanics, and other employees below the rank of supervisor, directly employed at the Site of the Work subject to the Manager or their designee's authority to determine what employees of any category are "required for Extra Work" and as to the portion of their time allotted to Extra Work; and "cost of labor" means the wages actually paid to and received by such employees plus a proper proportion of (a) vacation allowances and union dues and assessments which the employer actually pays pursuant to contractual obligation upon the basis of such wages, and (b) taxes actually paid by the employer pursuant to law upon the basis of such wages and workers' compensation premiums paid pursuant to law.

"Employees" as used above means only the employees of one employer.

"Net Cost" shall be the Contractor's actual cost after deducting all permitted cash and trade discounts, rebates, allowances, credits, sales taxes, commissions, and refunds (whether or not any or all of the same shall have been taken by the Contractor) of all parts and materials purchased by the Contractor solely for the use in performing its obligation hereunder provided, where such purchase has received the prior written approval of the Manager as required herein. The Contractor shall promptly furnish to the Manager such bills of sale and other instruments as the Manger may require,, executed, acknowledged and delivered, assuring to the Manager title to such materials, supplies, equipment, parts, and tools free of encumbrances.

“Materials” means temporary and consumable materials as well as permanent materials and “cost of materials” means the price (including taxes actually paid by the Contractor pursuant to law upon the basis of such materials) for which such materials are sold for cash by the manufacturers or producers thereof, or by regular dealers therein, whether or not such materials are purchased directly from the manufacturer, producer or dealer (or if the Contractor is the manufacturer or producer thereof, the reasonable cost to the Contractor of the manufacture and production), plus the reasonable cost of delivering such materials to the Site of the Work in the event that the price paid to the manufacturer, producer or dealer does not include delivery and in case of temporary materials, less their salvage value, if any.

The Manager shall have the authority to decide all questions in connection with the Extra Work. The exercise by the Manager of the powers and authorities vested in him/her by this section shall be binding and final upon the Port Authority and the Contractor.

The Contractor shall submit all reports, records and receipts as are requested by the Manager so as to enable him/her to ascertain the time expended in the performance of the Extra Work, the quantity of labor and materials used therein and the cost of said labor and materials to the Contractor.

The provisions of this Contract relating generally to Work and its performance shall apply without exception to any Extra Work required and to the performance thereof. Moreover, the provisions of the Specifications relating generally to the Work and its performance shall also apply to any Extra Work required and to the performance thereof, except to the extent that a written order in connection with any particular item of Extra Work may expressly provide otherwise.

If the Contractor deems work to be Extra Work, the Contractor shall give written notice to the Manager within twenty-four (24) hours of performing the work that it so considers as Extra Work, and failure of the Contractor to provide said notice shall be a waiver of any claim to an increase in compensation for such work and a conclusive and binding determination that it is not Extra Work.

The Contractor shall supply the amount of materials, supplies, equipment and personnel required by the Manager within two (2) hours following the receipt of written or verbal notice from the Manager, or in the case of an emergency as determined by the Manager, within two (2) hours following the receipt by the Contractor of the Manager’s written or oral notification. Where oral notification is provided hereunder, the Manager shall thereafter confirm the same in writing.

All Extra Work shall be billed to the Port Authority on a separate invoice on a monthly basis.

ATTACHMENT B

PART II – SPECIFICATIONS

1. Specific Definitions:

To avoid undue repetition, the following terms, as used in this Contract, shall be construed as follows:

“Facility” means those locations more fully described in Exhibit I.

“PATH” means Port Authority Trans Hudson, a subsidiary of the Port Authority.

“Port Authority Technical Center (PATC)” means 5 Marine View Plaza, Suite, 320, Jersey City, NJ 07030.

“Office of Medical Services” means 233 Park Avenue South, 8th Floor, New York, NY 10003.

“On Call” means at all times (twenty-four (24) hours a day, seven (7) days a week, including holidays.)

“Breath Alcohol Technician (BAT)/Urine Specimen Collector” means a person who instructs and assists employees in the alcohol testing process, collects urine specimens, and operates an evidential breath testing device.

“Breath Alcohol Testing Verification Form” means a form which is provided by the Port Authority Supervisor to the Collector which determines whether an employee is to be tested for alcohol if a safety sensitive function is performed at the time of testing.

“Contract Staff” means staff including Contract Supervisor, Management Representative, Urine Specimen Collector(s)/Breath Alcohol Technicians.

“Control Center” means the central location from which PATH operations are controlled.

“Designated Employer Representative” or “DER” means an employee authorized by the employer to take immediate action(s) to remove employees from safety-sensitive duties or cause employees to be removed from these covered duties, and to make required decisions in the testing and evaluation processes.

“Drug and Alcohol Specimen Collection Supervisor” means a Contract Supervisor who will also serve as a Management Representative who supervises the Urine Specimen Collector(s)/ Breath Alcohol Technicians.

“Drug and Alcohol Testing Program Manager” means designated employees at PATH and the Port Authority who administer the drug and alcohol program.

“Exception Sheet” means a document that is completed by the collector and Supervisor when an employee meets one of the exceptions to be excused from random testing.

“Facility Contacts” means Port Authority Facility Managers and Supervisors.

“DOT Regulations” means Department of Transportation (DOT) regulations dated August 31, 2009. Federal Railroad Administration 49 CFR Part 219 “Alcohol/Drug Program Compliance Manual”, Federal Railroad Administration (FRA) 49 CFR Part 40 – “Procedures for Transportation Workplace Drug and Alcohol

Testing Programs” and the Federal Motor Carrier Safety Administration (FMSCA) 49 CFR Part 382/Part 40 “Alcohol Drug Testing Requirements.”

“Intoxilyzer 240” means an evidential breath testing device that is approved by the National Highway Traffic Safety Administration (NHTSA) for the evidential testing of breath at the .02 and .04 alcohol concentrations, placed on NHTSA’s Conforming Products List (CPL) for “Evidential Breath Measurement Devices” and identified on the CPL as conforming with the model specifications available from NHTSA’s Traffic Safety Program.

“Licensed Practical Nurse (LPN)” means a graduate of a school of practical nursing whose qualifications have been examined by a state board of nursing and who has been legally authorized to practice as a licensed practical or vocational nurse under the supervision of a physician or registered nurse.

“Port Authority Rehabilitation Opportunity Agreement” means an agreement developed by a Substance Abuse Professional (SAP) which outlines appropriate treatment for employees in the follow-up program.

“Registered Nurse (RN)” means a graduate nurse who has been legally authorized (registered) to practice after examination by a state board of nurse examiners or similar regulatory authority, and who is legally entitled to use the designation RN.

“Management Representative” means the senior representative for the Contractor, dedicated to the Contract to ensure the quality of the services delivered and effective and confidential scheduling of urine specimen collections and breath alcohol tests.

“Manager/Superintendent” means a Port Authority Manager/Supervisor or PATH Superintendent who supervises or manages Commercial Drivers License (CDL) holders or hours of service employees covered under DOT regulations.

“Medical Review Officer (MRO)” means a Port Authority employee who is a licensed physician and who is responsible for receiving and reviewing laboratory results generated by the Port Authority/PATHs drug testing program and evaluating medical explanations for certain drug test results.

“Observer” means a Collector who performs observed collections under FRA 49 CFR Part 40.

“Port Authority (O&M)” means job titles that are categorized as Operations or Maintenance and covered under the DOT regulations.

“Program Manager” means designated employees at PATH and the Port Authority who administer the drug and alcohol program.

“Reasonable Suspicion Test” means a test that is determined by a trained supervisor in accordance with DOT regulations due to observable behaviors or appearances that are characteristics of alcohol misuse or controlled substances abuse. The determination to require an employee to undergo a reasonable suspicion test must be based on specific, contemporaneous, articulable observations concerning the appearance, behavior, and speech or body odors of the employee.

“Rehabilitation Opportunity Participants” means any Police Officer who is permitted to participate in rehabilitation program for self-identification situations and requires assistance from a substance abuse professional.

“Tour Commander” means a designated employee in charge of a tour (shift) at a Port Authority Police Command and supervising Sergeants.

“Tours of Duty” means a period of time between 12:00am and 12:00pm, Monday to Sunday, including holidays, spent performing operational duties.

“Trainmaster” means a PATH employee who reports to and receives instructions from the Superintendent of Transportation and the Coordinator of Rail Operations. The Trainmaster is in charge of overall operations of the railroad to ensure trains are operating according to schedule. The Trainmaster is also responsible for contacting the Contractor’s Supervisor/Management Representative for Federal Railway Administration (FRA) violations involving reasonable suspicion and post-accident testing of train crew.

“Transportation” means Collectors/BATs who collect urine specimens will transport sealed urine specimens to secure central locations as stipulated by the Port Authority or directly to the laboratory.

2. Work Required by the Specifications

These Specifications relate to Urine Specimen Collection for drug testing and Breath Alcohol Testing of safety sensitive and non-safety sensitive personnel in accordance with the terms and conditions and Specifications set forth herein. Collection of specimens and Breath Alcohol Testing are to be done at collection sites at various Port Authority and PATH facilities throughout the New York and New Jersey Metropolitan area as indicated in Exhibit I. The Contractor will provide a consistent schedule of Certified Urine Specimen Collectors/Breath Alcohol Technicians who will provide On-Call services as described in this Contract.

The Contractor acknowledges and agrees that the work to be performed under this Contract includes no fewer than five (5) licensed Registered Nurses/LPNs (preferably three (3) males but no fewer than two (2) males and two (2) females) and the provision of Urine Specimen Collections and Breath Alcohol Testing on site at Port Authority and PATH facilities, twenty-four (24) hours a day, seven (7) days a week and that it is the essence of this Contract that such collection and testing always be performed with strict adherence to applicable procedures and regulations in a confidential, professional and assertive manner. Such professionalism includes proactive communication between the Contractor and the Manager/Superintendent or his/her designee. Availability and responsiveness of staff around the clock and initiation of reasonable suspicion or post-accident tests within two (2) hours of being notified is essential. The Collection Services/Testing shall be re-performed, at no cost to the Port Authority, until the Manager is satisfied. At the conclusion of the Contract, if the Contractor fails to return all equipment provided by the Port Authority, including all Intoxilyzer 240 machines, which are used for alcohol breath testing, the Contractor will be charged the total cost of each piece of equipment not returned.

3. Duties of Contractor’s Personnel

The Contractor shall furnish Drug and Alcohol Specimen Collector Supervisor/Management Representatives, and Urine Specimen Collectors/BATs, at various Port Authority Facilities, listed on Exhibit I, to provide services, which shall include, but not be limited to the following:

A. Drug and Alcohol Specimen Collection Supervisor/Management Representative

The Contractor shall provide a Drug and Alcohol Specimen Collection Supervisor/Management Representative (hereinafter referred to as “Management Representative”) who will be available On-Call to discuss with the Manager/Superintendent or his/her designee the performance of Urine Specimen Collection and Breath Alcohol Testing Services and compliance with the terms and conditions of this Contract. Duties of the Collection Supervisor/Management Representative are:

- i. Plan, organize, direct and control the work of all Collectors/BATs to meet all the requirements of this Contract.
- ii. Ensure adherence to all established policies and procedures and maintain an excellent level of quality in accordance with the requirements of this Contract.
- iii. Maintain proper liaison with appropriate Port Authority personnel.
- iv. Be available On Call to direct staff or solve problems with collection/testing.
- v. Have full power and authority to act on behalf of the Contractor with respect to this Contract.
- vi. Conduct site visits/field inspections; report/correct deficiencies in the collection and testing process.
- vii. Train personnel with respect to their functions and evaluate subordinates' performance and submit to the Port Authority all credentials, resumes and licenses of all designated staff.
- viii. Ensure that Collectors/BATs meet training requirements as stipulated by Federal regulations.
- ix. Plan and coordinate the effective scheduling for PATH, O&M, and Public Safety programs to complete all tests within the assigned period.
- x. Maintain and/or supplement knowledge and documentation of compliance with Federal Drug Testing Regulations, Port Authority, PATH and Port Authority Police Policies and Procedures.
- xi. Ensure that Contractor personnel can effectively support testimony asserting that all appropriate policies and procedures were followed and the collection or breath test was done properly.
- xii. Perform corrective training for Collectors when indicated, consistent with DOT regulations 49 CFR Part 40.33.

B. Urine Specimen Collector/Breath Alcohol Technician

Contractor personnel acting as the Urine Specimen Collector/Breath Alcohol Technician (hereinafter referred to as "Collector" or "BAT") shall be properly trained and experienced in the collection of urine specimens for drug testing and breath alcohol testings on the Intoxilyzer 240 evidential breath testing device. The Contractor shall provide a same gender Collector/BAT if an observed collection is needed any time, twenty-four (24) hours a day, and seven (7) days a week. Observed collection by same gender Collector/BAT shall be performed within two (2) hours from the time the Contractor is informed of the need for observed collection.

Duties of Collectors/BATs are:

- i. Be available On Call to report to any Port Authority Facility to provide collection services and/or breath alcohol testing as required by the Collection Supervisor/Management Representative.
- ii. Collectors/BATs are expected to arrive at sites even in inclement weather.

- iii. Maintain proper liaison with appropriate Port Authority personnel and Collection Supervisor/Management Representative to effectively schedule and complete urine collections/breath alcohol tests in conformance with the appropriate regulations, policies and procedures.
- iv. Perform Urine Specimen Collections in conformance with applicable Public Safety Department Memoranda of Agreement, Port Authority or PATH policies, or applicable Federal Regulations (e.g. 49 CFR Parts 40, 219 and 382) as required. Perform breath alcohol tests in conformance with applicable Port Authority or PATH policies or applicable federal regulations (e.g. 49 CFR Parts 40, 219 and 382) as required.
- v. Maintain appropriate documentation of all incidents/collections in order to support future testimony challenging a disciplinary case based on drug or alcohol testing procedures.
- vi. Effectively testify to defend against challenges regarding positive drug and alcohol collections or tests.
- vii. Maintain appropriate documentation and possess necessary verbal skills needed to successfully testify that all applicable procedures and policies were complied with during collections and tests he or she performed.

C. Qualifications of Personnel

The Contractor shall furnish competent and adequately trained, licensed Registered, Practical Nurses (RNs or LPNs) to perform Urine Specimen Collection and Breath Alcohol Testing services. Prior to assigning of any personnel to the Contract as Contract Staff, the Contractor shall furnish to the Port Authority references of the proposed individuals detailing his/her experience with Urine Specimen Collection and Breath Alcohol Testing in accordance with 49 CFR Parts 40, 219, and 382 within the past two (2) years. In addition, the Contractor shall include confirmation of valid licenses and BAT certifications with two (2) years of experience using the Intoxilyzer 240 and certifications for successful completion of the Drug Test Collector (Urine) Training Guidelines based on USDOT 49 CFR Part 40 Training Guidelines and the Collector Proficiency training. All employees must meet federally mandated refresher training every five (5) years.

- 1. Contractor personnel acting as Collection Supervisor/Management Representative must possess the following knowledge and abilities to perform the following functions:
 - a. In depth knowledge of Federal Regulations pertaining to Urine Specimen Collection and Breath Alcohol Testing in order to guide others, including 49 CFR Parts 40, 219 and 382. Possession of approval certifications as stipulated by Federal Regulations is required. Demonstrated ability to direct urine specimen Collector/BAT staff to ensure quality delivery of the services described in this Contract.
 - b. Demonstrated managerial/supervisory experience to arrange and coordinate Urine Specimen Collection and Breath Alcohol Testing schedules for distinctly different drug testing programs simultaneously.
- 2. Contractor personnel acting as Collector/BAT shall be only Licensed Registered and/or Practical Nurses (RNs or LPNs) properly trained and experienced in the collection of urine specimens for drug testing and the provision of breath alcohol tests on the Intoxilyzer 240 evidential breath testing device and possess the following knowledge and abilities:

- a. The Collector/BAT shall possess all appropriate licenses and certifications in alcohol testing and drug screening to document training, competence and proficiency to perform Urine Specimen Collection and Breath Alcohol tests in accordance with Federal Regulations 49 CFR Parts 40, 219, and 382 and according to the requirements of this Contract and provide copies of such licenses and certifications upon request.
- b. Respond to and appropriately manage stressful situations involving potential confrontation during the collection process, which involve employees' rights versus regulatory requirements of the drug and/or alcohol testing regulations and policies.

The Contractor acknowledges and agrees that the work to be performed under this Contract includes no fewer than five (5) licensed Registered Nurses/LPNs (preferably three (3) males but no fewer than two (2) males and two (2) females) and the provision of Urine Specimen Collections and Breath Alcohol Testing on site at Port Authority and PATH facilities, twenty-four (24) hours a day, seven (7) days a week and that it is the essence of this Contract that such collection and testing always be performed with strict adherence to applicable procedures and regulations in a confidential, professional and assertive manner. Such professionalism includes proactive communication between the Contractor and the Manager/Superintendent or his/her designee. Availability and responsiveness of staff around the clock and initiation of reasonable suspicion or post accident tests within two (2) hours of being notified is essential.

4. General Description of Services – Urine Specimen Collection

- A. **PATH:** Urine Specimen Collections performed for PATH must conform to DOT Regulations as defined in 49 CFR, Part 219 and Part 40 as amended from time to time, as well as protocols established to test under PATH's own authority. The Contractor shall provide on-site Collectors for urine collections for PATH's random, reasonable suspicion and follow-up tests of approximately two hundred (200) employees annually as follows:
 1. **Random Collections**

For random drug testing, the Contractor may be contacted on a daily basis, at least twelve (12) hours in advance of the collection time, to perform urine collections at PATH's Headquarters at the Journal Square Transportation Center, Jersey City, New Jersey. The Contractor must be On Call to cover all Tours of Duty at PATH, inclusive of Saturdays, Sundays and holidays as listed in Attachment B. These collections are performed on a scheduled basis.
 2. **Reasonable Suspicion/Reasonable Cause Testing**

Urine Specimen Collection for reasonable suspicion/cause must begin within **two (2) hours** of PATH's notification to the Contractor. Reasonable Suspicion/Cause tests may be requested during all hours of operation. Therefore, the Contractor must be On Call and must provide on-site Collectors on an as needed basis. The Collector shall have all documents and supplies as described herein to proceed with the collection.
 3. **Follow Up Testing**

The Contractor will be required to perform Urine Specimen Collections for approximately fifteen (15) employees each month under direct observation in compliance with the DOT regulations dated November 1, 2008, and any updates during the Contract term. The majority of the follow-up tests will be conducted in compliance with Federal Regulations 49 CFR Part 219 and Part 40, but a small portion of tests (less than ten (10) per year) will be non-federal follow-up tests conducted under the authority of the Port Authority. Follow-up tests will be conducted at the designated location at the Journal Square Transportation Center on all Tours of Duty. The Drug and Alcohol Testing Program

Manager will give the Management Representative a list of names for Follow-Up Testing as required. The Management Representative will work with the Program Manager and designated Facility Contacts to schedule and complete tests for each month as prescribed by the Substance Abuse Professional. PATH may require a follow up test to be performed at any time, which may deviate from the normal schedule.

4. Return to Duty Testing

Urine Specimen Collection for return to duty testing will be conducted under direct observation in compliance the DOT regulations dated November 1, 2008, and any updates during the Contract term, which is set forth in 49 CFR Part 40.67(b). In some cases, the Contractor may also be required to perform Breath Alcohol Tests.

B. OPERATIONS & MAINTENANCE: The Contractor shall provide on-site Collectors for Urine Specimen Collections for approximately one thousand (1,000) Port Authority Operations and Maintenance (O&M) employees annually; tests will be performed under Random, Reasonable Suspicion, Post Accident, and Follow-Up testing as defined in 49 CFR, Part 382 and Part 40. Certain Reasonable Suspicion and Follow-Up tests are conducted under Port Authority Rules and Regulations (non-Federal), but collection procedures follow 49 CFR Part 40.

i. Random Collections

The Contractor shall provide collection of Urine Specimens for approximately sixty-five (65) employees each month on a random basis. The testing of the employees selected can be at any and all of the sites identified in Exhibit I and during all Tours of Duty. The Program Manager will provide a list of names to the Contractor's Management Representative at the beginning of each month. The Management Representative will work with the Program Manager and designated Facility Contacts to schedule and complete all tests within the monthly testing period. The Contractor will be expected to establish the collection schedule independently each month with assistance from the Program Manager only when necessary to resolve problems in cooperation with designated Facility Contacts. The Contractor must respond on any day of the year to perform collections on all Tours of Duty at the Port Authority inclusive of Saturdays, Sundays, and holidays in order to complete all collections within the monthly schedule.

ii. Reasonable Suspicion and Post Accident Testing

The Contractor shall provide Urine Specimen Collections in cases of Reasonable Suspicion and Post Accident testing as defined in 49 CFR, Part 382 and Part 40. For these tests, the Contractor must be On Call and initiate testing within **two (2) hours** of notification. Reasonable Suspicion and Post Accident Testing is to be done at collection sites at various Port Authority and PATH facilities throughout the New York and New Jersey Metropolitan area as indicated in Exhibit I. The Contractor may also be required to perform Reasonable Suspicion tests under the Port Authority's authority (e.g. non-Federal Testing), but collection procedures shall follow 49 CFR Part 40. The Collector shall have all documents and supplies as noted in paragraph 7 entitled Urine Collection Supplies.

iii. Follow Up Testing

The Contractor shall provide Urine Specimen Collections for approximately thirty (30) employees each month under direct observation in compliance with DOT regulations dated November 1, 2008, and any updates during the Contract term. The majority of follow-up tests will be conducted in compliance with Federal Regulations 49 CFR Part 382 and Part 40, however a small portion of tests (less than fifty (50) per year) will be non-Federal follow-up tests

conducted under the authority of the Port Authority. Follow-up tests will be conducted at any and all of the sites identified here in Exhibit I and on all Tours of Duty. The Program Manager will give the Management Representative a list of names for follow-up testing as required. The Management Representative will work with the Program Manager and designated Facility contacts to schedule and complete tests within the testing cycle.

iv. **Return to Duty Testing**

Urine Specimen Collection for Return to Duty Testing will be conducted under direct observation in compliance with the Department of Transportation (DOT) regulations dated November 1, 2008, and any updates during the Contract term, which is found in 49 CFR Part 40.67(b). In some cases, the Contractor may also be required to administer Breath Alcohol Tests.

C. **POLICE:** All Port Authority Police Testing will be done under the authority of negotiated agreements and applicable labor agreements. While these tests are not Federally mandated, collection procedures will follow those set forth in 49 CFR Part 40.

i. **Random Collections**

The Contractor shall provide Collection of Urine Specimens for approximately six hundred (600) police employees who will be tested at random annually. The Contractor will be notified by the Public Safety Department representative at least twenty-four (24) hours in advance of the date selected for a Random Collection. On the Random Collection date, a Collector(s) must be available by 8:00 a.m. at the Port Authority Technical Center. The Contractor shall provide a secure fax for receipt of a schedule, identifying the facilities where Random Collections are to be made, as well as the Tours of Duty and a roster of the employees to be randomly tested. The Collector(s) shall proceed immediately to the collection site(s) to complete all collections on the identified Tours of Duty. Upon arrival at each Facility, the Collector will report to the Police Desk and request to see the Police Tour Commander. The Tour Commander will arrange for the randomly selected employees to report to the collection site.

Random collections may be scheduled by the representative of the Public Safety Department twenty four (24) hours a day, seven (7) days a week.

ii. **Reasonable Suspicion Collections**

The Contractor shall provide the collection (and Transportation) of Urine Specimens pursuant to Reasonable Suspicion Testing. The Public Safety representative will notify the Contractor of the need for a Reasonable Suspicion Collection and will identify the Port Authority collection site where the collection will be made. The collection may be at any of the sites identified in Exhibit I. The Contractor shall provide a Collector at the identified Facility within **two (2) hours** of being notified by the Public Safety representative of the need for a Reasonable Suspicion Collection. A Reasonable Suspicion Collection may be requested on any day of the year, at any time of the day. The Collector shall have all documents and supplies as described herein to proceed with a collection, as noted in paragraph 7 entitled "Urine Collection Supplies", with the exception of the Federal Drug Testing Custody Control Form. All collection and transportation procedures shall be identical to those applicable to Random Collections.

iii. **Rehabilitation Opportunity Agreement-Follow-Up Collections**

The Contractor will also be responsible for the collection and (Transportation) of Urine Specimens from Police employees participating in a Port Authority Rehabilitation Opportunity Agreement. Urine collections from Rehabilitation Opportunity Participants shall be conducted at the request of the Port Authority's Office of Medical Services. The Contractor shall be

responsible for providing a Collector at the request of Port Authority Office of Medical Services within two (2) hours of being notified by the Office of Medical Services of the need for such a collection.

iv. Follow Up Testing

The Contractor will be required to perform Urine Specimen Collections for approximately one (1) employee each month under direct observation in compliance with DOT regulations dated November 1, 2008, set forth in 49 CFR Part 40.67(b). In some cases, the Contractor may also be required to administer Breath Alcohol Tests.

v. Return to Duty Testing

Urine specimen collection for Return to Duty Testing will be conducted under direct observation in compliance with the DOT regulation dated November 1, 2008, set forth in 49 CFR Part 40.67(b). In some cases, the Contractor may also be required to administer Breath Alcohol Tests.

5. Urine Specimen Collection Transportation

Collectors shall transport all collected and properly sealed Urine Specimens to a secure central location as stipulated by the Port Authority. The Contractor will then promptly arrange for transportation of all specimens to the testing laboratory contracted by PATH, Port Authority O&M or Port Authority Police for its drug testing. From the time of collection through release to the laboratory courier, or other transportation method approved by the Superintendent/Manager, the Contractor must ensure the security of specimens and related paperwork.

6. Witness Testimony

Upon request, Collectors shall testify to the collection procedures, chain of custody and all matters related thereto in administrative disciplinary or court proceedings. Collectors shall be fully trained, informed, and knowledgeable on all applicable, collection policies and procedures and shall retain necessary documentation, as noted in paragraph 7 entitled "Urine Collection Supplies", to substantiate in their testimony that all appropriate procedures and policies were followed on each collection.

7. Urine Collection Supplies

A. **PATH:** The Collector will utilize only those supplies and documents supplied by the laboratory under Contract with PATH and other necessary accessories such as evidence tape and envelopes as supplied by PATH. The Collectors shall bring with them the following supplies and documents provided by the laboratory or PATH to PATH's drug testing site.

i. Split Specimen Collector Kits

Provided by the PATH-contracted laboratory, each kit includes a single use collection cup that contains two (2) specimen bottles. The specimen cup that contains the two (2) specimen bottles are individually and securely wrapped and are unwrapped in the presence of the employee and Collector at the time of specimen collection.

ii. Federal Drug Testing Custody and Control Form

This is a five (5) part carbonless manifold-type form issued by DOT, and to be used only for Federal Testing (e.g. FRA).

iii. Forensic Drug Testing Custody and Control Form

This is a five (5) part carbonless manifold-type form issued by the laboratory for non-Federal testing.

iv. **Tamper-Proof Sealing System**

The Custody and Control Form has preprinted labels and seals such that the specimen bottle top can be sealed against undetected opening. This bottle will be identified with a unique identifying number identical to that appearing on the drug testing Custody and Control Form, and space will be provided to initial the bottle affirming its identity.

v. **Shipping Containers**

The shipping container used must have been approved by the U.S. Department of Transportation for transporting one (1) or more specimens and accompanying paperwork and must be sealable to prevent undetected tampering.

B. PORT AUTHORITY OPERATIONS & MAINTENANCE:

The Collector shall utilize only those supplies and documents supplied by the laboratory under Contract with the Port Authority. O&M's Urine Collection Supplies are almost identical to those identified for PATH above (except for the account numbers on Custody and Control Forms, and the exception sheet), which Collectors must bring with them to the collection site. The Program Manager will provide all supplies, documents and equipment needed for urine collections, which the contracted testing laboratory does not supply. The Collector must transport such items to and from the collection sites.

In addition to supplies designated above, the Program Manager will provide the Collector with the following forms which the Collector must bring to the collections sites:

Exception Sheet
Breath Alcohol Testing Verification Form

C. POLICE:

The drug testing laboratory under Contract to Port Authority Police will provide supplies and documents needed for urine collection. The supplies for Police are almost the same as those for PATH and Port Authority O&M testing, except for additional forms specified below, and the fact that account numbers on Custody and Control Forms may differ. The Program Manager for Police testing will provide all supplies, documents and equipment for urine collection which the contracted laboratory does not supply, and the Collector must transport such items to and from the collection sites.

In addition to supplies designated above, Police will provide the Collector with the following forms which the Collector must bring to the collection site:

1. Exception Sheet
2. Member Notification Form

8. Urine Collection Procedures

Urine Specimen Collection procedures will comply with 49 CFR Part 40 "Procedures for Transportation Workplace Drug and Alcohol Testing Programs" when performing tests for the Port Authority and PATH.

- a. **Verify Identity** – PATH/Port Authority picture identification of the employee must be presented prior to collection. If no picture identification is available, verification of identity by the immediate supervisor will be permissible. If identity cannot be verified, the collection will not proceed and the Collector/BAT must contact the Designated Employer Representative (DER) to verify the identity of the employee.. If the employee fails to arrive as scheduled, the Collector will notify the Facility Supervisor and Program Manager by telephone (Port Authority O&M) or Trainmaster on duty (PATH). Trainmaster will notify the Program Manager the following day.

Note: For Police – The Collector will notify the Tour Commander of any instance wherein an employee ID must be verified because no picture ID is available. The collection will not proceed until identification can be verified. If any employee fails to arrive as scheduled, or if a specimen is not obtained, the Collector will notify the Tour Commander. The Tour Commander will complete the Exception Sheet and return it to the Collector after notifying the Central Police Desk. The Collector will execute Exception Sheet as indicated.

- b. **Stock Forms** – Collectors will bring with them and properly complete all applicable forms. Minimum forms for on-site use are:

1. Federal Drug Testing Custody and Control Form
2. Forensic Drug Testing Custody and Control Form

For Police Only:

Public Safety Department’s “Member Notification Form”

Public Safety Department (Police) will supply the Contractor with this form, which must be executed by the employee and Collector prior to testing.

“Exception Sheet” – Collector to ensure form is complete for any employee selected for random testing who does not, regardless of the reason, provide a specimen suitable for testing. The completed form is to be returned to Police Headquarters, at 5 Marine View Plaza, Suite 320, Hoboken, New Jersey, 07030. Public Safety Department (Police) will supply the Contractor with this form.

Note: For PATH – Employee Notification Sheet – Provided by PATH Staff

Note: For Operation & Maintenance – Exception Sheet – Collector to ensure form is complete for any employee selected for random testing who does not, regardless of the reason, provide a specimen suitable for testing. The completed form is returned to Paulette Counts, 233 Park Avenue South, 8th Floor, New York, NY 10003.

- c. **Notification in Case of Adulteration or Failure to Cooperate** – If an employee submits a sample which appears adulterated, out of acceptable temperature range or if the employee otherwise fails to provide an acceptable sample, does not cooperate with, or attempts to obstruct the collection process, the Collector must notify the appropriate Facility Supervisor and:

For PATH, notify the Program Manager and/or Trainmaster.

For Port Authority, notify the Program Manager.

For Police notify the Public Safety Department Program Manager.

- d. **Holding and Shipment of Specimens and Paperwork** – The Collector shall secure all specimens until shipment or until pickup by laboratory courier contracted by PATH/Port Authority or the Public Safety Department (Police) for its drug testing.

Collection paperwork for PATH employees shall be left in a sealed envelope in a designated area of the Control Center at PATH.

Original paperwork related to collection for Port Authority O&M shall be hand delivered or sent by a courier (UPS or FedEx) suitable to the Port Authority at the expense of the Contractor on a daily basis to the Program Manager and the Port Authority Medical Review Officer (“MRO”) at 233 Park Avenue South-8th Fl., New York, NY 10003. (Materials should be sent in a single mailing).

Public Safety Department Paperwork (e.g. Parts 2&4 of the Forensic Drug Testing Custody and Control Form) shall be forwarded to the Port Authority Office of Medical Services daily or as tested if less than daily via a courier (UPS or FedEx) suitable to the Port Authority at the Contractor’s expense. The Program Manager will forward Part 4 of the Custody and Control Form via messenger in a sealed confidential envelope to the Public Safety Director or his designee at the Port Authority Technical Center.

Police – The Public Safety Department tests are performed under negotiated labor agreements, however, collection procedures will follow 49 CFR Part 40 as described herein for PATH and Port Authority O&M, except as specifically designated herein or as instructed by the Superintendent under the guidance of the appropriate Memorandum of Agreement.

9. General Description of Services – Breath Alcohol Testing

NOTE: The Port Authority Public Safety Department (Police) does not participate in a random alcohol testing program. However, Police may be required to submit to an alcohol test in connection with a Reasonable Suspicion request.

Breath Alcohol Testing for O&M and PATH may be conducted in all of the situations described for urine collections under Section 2 herein entitled, “Work Required by the Specifications”.

- A. PATH/Port Authority Operation & Maintenance: The Port Authority O&M and PATH Breath Alcohol Testing procedures will comply with appropriate sections of 49 CFR Part 40, “Procedures for Transportation Workplace Drug and Alcohol Testing Programs” when performing tests for the Port Authority and PATH.

i. **Preparation and Location of Breath Alcohol Test**

When the employee enters the alcohol testing location, the BAT will require him or her to provide positive identification (through the use of PATH/PA photo ID card). On request by the employee, the BAT will provide positive identification to the employee. The BAT will explain the testing procedure to the employee.

For PATH: All necessary equipment and supplies for breath testing will be supplied by PATH and will be maintained by PATH at the PATH Drug & Alcohol Testing Site (Control Center).

- ii. **For Port Authority Operation & Maintenance Program:** All necessary equipment and supplies for breath testing will be supplied by the Port Authority. The Contractor will be responsible for bringing all equipment and supplies to the testing locations and shall be responsible for securing all equipment and supplies between testing dates. BATs are required to work with Facility Contacts to determine performance of safety sensitive functions prior to administering a breath alcohol test utilizing and completing a Breath Alcohol Testing Verification Form. All equipment provided to the Contractor by the Port Authority/PATH used for alcohol breath testing (Intoxilyzer 240) must be returned in good working condition at the conclusion of this contract.
- iii. **Notification and Distribution of Results** – The BAT will transmit all PATH results in a confidential, hand carried sealed envelope in a designated area identified by PATH. PATH has designated representatives for the purpose of receiving and handling alcohol testing results in a confidential manner. All written communications by BATs to PATH concerning the alcohol testing results of employees will be made to the PATH Drug and Alcohol Testing Program Administrator. Such transmissions will be made in writing, marked “Confidential.”.

The BAT will transmit all Port Authority O&M results to the Program Manager via a courier (UPS or FedEx) suitable to the Port Authority at the expense of the Contractor on a daily basis or as tested if less than daily to ensure the integrity of the alcohol testing form. However, in the event of a positive breath test for a Port Authority O&M employee, the BAT will inform the employee’s Facility Supervisor, and the Program Manager by telephone, of a positive result immediately. The Supervisor will remove the employee from service. Paperwork related to the alcohol test will immediately be faxed to the Drug & Alcohol Testing Program Manager.

- iv. **Procedures to Follow When Employee is Unable to Provide an Adequate Amount of Breath** – The following procedures will be followed by PATH/Port Authority O&M BATs in any case in which an employee is unable or alleges that she/he is unable to provide an adequate amount of breath because of a medical condition. The BAT shall again instruct the employee to attempt to provide an adequate amount of breath. If the employee refuses to make the attempt, the BAT shall immediately inform the appropriate PATH or Port Authority Manager/Supervisor. This will be deemed a refusal.

If, after three (3) attempts, the employee fails to provide an adequate amount of breath, the BAT shall so note in the “Remarks” section of the Breath Alcohol Testing Form and immediately inform the appropriate PATH or Port Authority Drug & Alcohol Testing Program Manager. If the employee attempts and fails to provide an adequate amount of breath after three attempts:

The MRO may evaluate or send the employee to an independent medical specialist [as required under the Federal Regulations] to determine whether the employee is medically unable to provide an adequate amount of breath or has refused to test.

For PATH: The BAT will contact the appropriate PATH Manager/Supervisor, Administrator and Program Manager, Drug and Alcohol Testing Program Manager by phone or pager.

For the Port Authority Operation & Maintenance Program: The BAT will inform the Port Authority Supervisor at the Facility and the Drug & Alcohol Testing Program Manager by phone or pager.

The PATH or O&M Supervisor will remove the employee from service and direct the employee to report to the Medical Review Officer (MRO) at the Office of Medical Services on the next business day.

- v. **Witness Testimony** – The Contractor shall make available the Breath Alcohol Technician as required to testify to the testing procedures and all matters related thereto in administrative disciplinary proceedings.

Accordingly, Breath Alcohol Technicians shall be fully trained, informed, and knowledgeable on all applicable testing policies and procedures and shall retain necessary documentation to substantiate in their testimony that all appropriate procedures and policies were followed on each collection.

ATTACHMENT B

III - COST PROPOSAL FORMS

Entry of Prices

- a. The prices quoted shall be written in figures, preferably in black ink, where required in the spaces provided on the Cost Proposal Form (s) attached hereto and made a part hereof.
- b. All Proposers are asked to ensure that all charges quoted for similar operations in the Contract are consistent.
- c. Prices must be submitted for each Item required on the Cost Proposal Form (s). Proposers are advised that the Items on the Cost Proposal Form (s) correspond to the required services set forth in the Specifications hereunder.
- d. Proposers must insert all figures as required and verify all computations for accuracy. The Port Authority in its sole judgment reserves the right to: (1) reject Proposal without checking them for mathematical errors or omissions, (2) reject Proposal that contain or appear to contain errors or omissions, and (3) supply corrections to Proposal that contain or appear to contain mathematical errors and omissions, and in this case the Port Authority reserves the right to recompute the Estimated Contract based upon the Unit Prices inserted by the Proposers, which amount shall govern in all cases.
- e. In the event that a Proposer quotes an amount in the Estimated Annual Price column but omits to quote a Unit Price for that amount in the space provided, the Port Authority reserves the right to compute and insert the appropriate Unit Price.
- f. The Total Estimated Contract Price is solely for the purpose of facilitating the comparisons of Proposals. Compensation shall be in accordance with the section of this Contract entitled "Payment".
- g. The Total Estimated Three (3) Year Contract Price shall be obtained by adding the Total Estimated Contract Price for the first year of the Contract, to the Total Estimated Contract Total for each subsequent year.

COST PROPOSAL FORM

Estimated Year One (1) Pricing

	<u>Estimated Annual Quantity</u>	x	<u>Price Per Test</u>	=	<u>Estimated Annual Price</u>
A. Combined Urine Collection and Breath Alcohol Tests: O&M: (600) PATH: (200)	800		x \$ _____	=	\$ _____
B. Random Urine Collection Only O&M: (400) POLICE: (600)	1000		x \$ _____	=	\$ _____
C. Breath Alcohol Test Only	20		x \$ _____	=	\$ _____
D. Observed Urine Collection	200		x \$ _____	=	\$ _____
E. Combined Urine Collection and Breath Alcohol Test (24 hour on call for Reasonable Suspicion or Post Accident with 2 hour response time)	45		x \$ _____	=	\$ _____
F. Flat fee when Collector responds to Collection Site and no candidates are tested	20		x \$ _____	=	\$ _____
G. Reasonable Suspicion Urine and Breath Alcohol Collections (24 hour on call within 2 hours from notification response time)	25		x \$ _____	=	\$ _____
H. Rehabilitation Testing Opportunity Agreement Urine		5	x \$ _____	=	\$ _____
I. Witness Testimony at Administrative Hearings	48hrs		x \$ _____	=	\$ _____
Total Estimated Contract Price First Year = \$ _____					
Sum of (A)+(B)+(C)+(D)+(E)+(F)+(G)+(H)+(I)					

NOTE: Contractor will be paid for tests which result in refusals (if properly documented).

COST PROPOSAL FORM

Estimated Year Two (2) Pricing

	<u>Estimated Annual Quantity</u>	x	<u>Price Per Test</u>	=	<u>Estimated Annual Price</u>
A. Combined Urine Collection and Breath Alcohol Tests: O&M: (600) PATH: (200)	800		x \$ _____		= \$ _____
B. Random Urine Collection Only O&M: (400) POLICE: (600)	1000		x \$ _____		= \$ _____
C. Breath Alcohol Test Only	20		x \$ _____		= \$ _____
D. Observed Urine Collection	200		x \$ _____		= \$ _____
E. Combined Urine Collection and Breath Alcohol Test (24 hour on call for Reasonable Suspicion or Post Accident with 2 hour response time)	45		x \$ _____		= \$ _____
F. Flat fee when Collector responds to Collection Site and no candidates are tested	20		x \$ _____		= \$ _____
G. Reasonable Suspicion Urine and Breath Alcohol Collections (24 hour on call within 2 hours from notification response time)	25		x \$ _____		= \$ _____
H. Rehabilitation Testing Opportunity Agreement Urine	5		x \$ _____		= \$ _____
I. Witness Testimony at Administrative Hearings	48hrs		x \$ _____		= \$ _____
Total Estimated Contract Price First Year = \$ _____					
Sum of (A)+(B)+(C)+(D)+(E)+(F)+(G)+(H)+(I)					

NOTE: Contractor will be paid for tests which result in refusals (if properly documented).

COST PROPOSAL FORM

Estimated Year Three (3) Pricing

	<u>Estimated Annual Quantity</u>	x	<u>Price Per Test</u>	=	<u>Estimated Annual Price</u>
A. Combined Urine Collection and Breath Alcohol Tests: O&M: (600) PATH: (200)	800		x \$ _____	=	\$ _____
B. Random Urine Collection Only O&M: (400) POLICE: (600)	1000		x \$ _____	=	\$ _____
C. Breath Alcohol Test Only	20		x \$ _____	=	\$ _____
D. Observed Urine Collection	200		x \$ _____	=	\$ _____
E. Combined Urine Collection and Breath Alcohol Test (24 hour on call for Reasonable Suspicion or Post Accident with 2 hour response time)	45		x \$ _____	=	\$ _____
F. Flat fee when Collector responds to Collection Site and no candidates are tested	20		x \$ _____	=	\$ _____
G. Reasonable Suspicion Urine and Breath Alcohol Collections (24 hour on call within 2 hours from notification response time)	25		x \$ _____	=	\$ _____
H. Rehabilitation Testing Opportunity Agreement Urine		5	x \$ _____	=	\$ _____
I. Witness Testimony at Administrative Hearings	48hrs		x \$ _____	=	\$ _____
Total Estimated Contract Price First Year = \$ _____					
Sum of (A)+(B)+(C)+(D)+(E)+(F)+(G)+(H)+(I)					

NOTE: Contractor will be paid for tests which result in refusals (if properly documented).

SUMMARY SHEET

TOTAL ESTIMATED CONTRACT PRICE FIRST YEAR \$ _____

TOTAL ESTIMATED CONTRACT PRICE SECOND YEAR \$ _____

TOTAL ESTIMATED CONTRACT PRICE THIRD YEAR \$ _____

TOTAL ESTIMATED THREE (3) YEAR CONTRACT PRICE = \$ _____
Sum of years 1, 2 & 3

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STANDARD CONTRACT TERMS AND CONDITIONS

PART I GENERAL DEFINITIONS

To avoid undue repetition, the following terms, as used in this Agreement, shall be construed as follows:

Authority or Port Authority - shall mean the Port Authority of New York and New Jersey.

PATH – shall mean the Port Authority Trans-Hudson Corporation.

Contract, Document or Agreement - shall mean the writings setting forth the scope, terms, conditions and Specifications for the procurement of Goods and/or Services, as defined hereunder and shall include, but not be limited to: Invitation for Bid (IFB), Request for Quotation (RFQ), Request for Proposal (RFP), Purchase Order (PO), Cover Sheet, executed Signature Sheet, AND PRICING SHEETS with Contract prices inserted," "STANDARD CONTRACT TERMS AND CONDITIONS," and, if included, attachments, endorsements, schedules, exhibits, or drawings, the Authority's acceptance and any written addenda issued over the name of the Authority's Manager, Purchasing Services Division.

Days or Calendar Days - shall mean consecutive calendar days, Saturdays, Sundays, and holidays, included.

Week - unless otherwise specified, shall mean seven (7) consecutive calendar days, Saturdays, Sundays, and holidays.

Month – unless otherwise specified, shall mean a calendar month.

Director/General Manager – shall mean the Director/General Manager of PATH which operates the facility of PATH at which the services hereunder are to be performed, for the time being, or his/her successor in duties for the purpose of this Contract, acting personally or through one of his/her authorized representatives for the purpose of this Contract.

Superintendent/Manager – shall mean the Superintendent/Manager of the PATH Division responsible for operating the said Facility for the time being or his/her successor in duties for the purpose of this Contract, acting personally or through his/her duly authorized representative for the purpose of this Contract.

No person shall be deemed a representative of the Director/General Manager or Superintendent/Manager except to the extent specifically authorized in an express written notice to the Contractor signed by the Director/General Manager or Superintendent/Manager as the case may be. Further, no person shall be deemed a successor in duties of the Director/General Manager unless the Contractor is so notified in writing signed by the Authority's Manager, Purchasing Services Division. No person shall be deemed a successor in duties of the Superintendent/Manager unless the Contractor is so notified in a writing signed by the Director/General Manager.

Minority Business Enterprise (MBE) - shall mean a business entity which is at least 51% owned and controlled by one or more members of one or more minority groups, or, in the case of a publicly held corporation, at least 51% of the stock of which is owned by 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.

"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 Mexican, Puerto Rican, 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) Native American 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.

Site of the Work - or words of similar import shall mean the Facility and all buildings and properties associated therewith as described in this Contract.

Small Business Enterprise (SBE) - The criteria for a Small Business Enterprise are:

- o The principal place of business must be located in New York or New Jersey;
- o The firm must have been in business for at least three years with activity;
- o Average gross income limitations by industry as established by the Port Authority.

Subcontractor - shall mean anyone who performs work (other than or in addition to the furnishing of materials, plant or equipment) in connection with the services to be provided hereunder, directly or indirectly for or on behalf of the Contractor (and whether or not in privity of contract with the Contractor), but shall not include any person who furnished merely his own personal labor or his own personal services. "Subcontractor", however, shall exclude the Contractor or any subsidiary or parent of the Contractor or any person, firm or corporation which has a substantial interest in the Contractor or in which the Contractor or the parent or the subsidiary of the Contractor, or an officer or principal of the Contractor or of the parent of the subsidiary of the Contractor has a substantial interest, provided, however, that for the purpose of the clause hereof entitled "Assignments and Subcontracts" the exclusion in this paragraph shall not apply to anyone but the Contractor itself.

Women-Owned Business Enterprise (WBE) - shall mean a business enterprise which is at least 51% owned by one or more women, or, in the case of a publicly held corporation, at least 51% 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 or resident aliens.

Work - shall mean all services, equipment and materials (including materials and equipment, if any, furnished by the Authority) and other facilities and all other things necessary or proper for, or incidental to the services to be performed or goods to be furnished in connection with the service to be provided hereunder.

PART II GENERAL PROVISIONS

1. Facility Rules and Regulations of PATH

- a. The Contractor shall observe and obey (and compel its officers, employees, guests, invitees, and those doing business with it, to observe and obey) the facility Rules and Regulations of PATH now in effect, and such further reasonable Rules and Regulations which may from time to time during the term of this Agreement be promulgated by PATH for reasons of safety, health, preservation of property or maintenance of a good and orderly appearance and efficient operation of the Facility. PATH agrees that, except in case of emergency, it shall give notice to the Contractor of every Rule and Regulation hereafter adopted by it at least five days before the Contractor shall be required to comply therewith.
- b. A copy of the facility Rules and Regulations of PATH shall be available for review by the Contractor at the Office of the Director/General Manager of PATH.

2. Contractor Not An Agent

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

3. Contractor's Warranties

The Contractor represents and warrants:

- a. That it is financially solvent, that it is experienced in and competent to perform the requirements of this Contract, that the facts stated or shown in any papers submitted or referred to in connection with the solicitation are true, and, if the Contractor be a corporation, that it is authorized to perform this Contract;
- b. That it has carefully examined and analyzed the provisions and requirements of this Contract, and that from its own investigations it has satisfied itself as to the nature of all things needed for the performance of this Contract, the general and local conditions and all other matters which in any way affect this Contract or its performance, and that the time available to it for such examination, analysis, inspection and investigation was adequate;
- c. That the Contract is feasible of performance in accordance with all its provisions and requirements and that it can and will perform it in strict accordance with such provisions and requirements;
- d. That no Director, officer, agent or employee of PATH is personally interested directly or indirectly in this Contract or the compensation to be paid hereunder and that no Commissioner, officer, agent or employee of the Port Authority is personally interested directly or indirectly in this Contract or the compensation to be paid hereunder;
- e. That, except only for those representations, statements or promises expressly contained in this Contract, no representation, statement or promise, oral or in writing, of any kind whatsoever by the Port Authority, PATH, their Directors, Commissioners, officers, agents, employees or consultants has induced the Contractor to enter into this Contract or has been relied upon by the Contractor, including any with reference to: (1) the meaning, correctness, suitability, or completeness of any provisions or requirements of this Contract; (2) the nature, quantity, quality or size of the materials, equipment, labor and other facilities needed for the performance of this Contract; (3) the general or local conditions which may in any way affect this Contract or its performance; (4) the price of the Contract; or (5) any other matters, whether similar to or different from those referred to in (1) through (4) immediately above, affecting or having any connection with this Contract, the bidding thereon, any discussions thereof, the performance thereof or those employed therein or connected or concerned therewith.

Moreover, the Contractor accepts the conditions at the Site of the Work as they may eventually be found to exist and warrants and represents that it can and will perform the Contract under such conditions and that all materials, equipment, labor and other facilities required because of any unforeseen conditions (physical or otherwise) shall be wholly at its own cost and expense, anything in this Contract to the contrary notwithstanding.

Nothing in the Specifications or any other part of the Contract is intended as or shall constitute a representation by PATH as to the feasibility of performance of this Contract or any part thereof.

The Contractor further represents and warrants that it was given ample opportunity and time and by means of this paragraph was requested by the Port Authority and PATH to review thoroughly all documents forming this Contract prior to opening of Bids on this Contract in order that it might request inclusion in this Contract of any statement, representation, promise or provision which it desired or on which it wished to place reliance; that it did so review said documents, that either every such statement, representation, promise or provision has been included in this Contract or else, if omitted, that it expressly relinquishes the benefit of any such omitted statement, representation, promise or provision and is willing to perform this Contract without claiming reliance thereon or making any other claim on account of such omission.

The Contractor further recognizes that the provisions of this numbered clause (though not only such provisions) are essential to PATH's consent to enter into this Contract and that without such provisions, PATH would not have entered into this Contract.

4. Personal Non-Liability

Neither the Directors of PATH, the Commissioners of the Port Authority nor any of them, nor any officer, agent or employee of PATH or the Port Authority, shall be charged personally by the Contractor with any liability, or held personally liable to the Contractor under any term or provision of this Agreement, or because of its execution or attempted execution, or because of any breach, or attempted or alleged breach, thereof.

5. Equal Employment Opportunity, Affirmative Action, Non-Discrimination

- a. The Contractor is advised to ascertain and comply with all applicable federal, State and local statutes, ordinances, rules and regulations and, federal Executive Orders, pertaining to equal employment opportunity, affirmative action, and non-discrimination in employment.
- b. Without limiting the generality of any other term or provision of this Contract, in the event of the Contractor's non-compliance with the equal opportunity and non-discrimination clause of this Contract, or with any of such statutes, ordinances, rules, regulations or Orders, this Contract may be cancelled, terminated or suspended in whole or in part.

6. Rights and Remedies of PATH

PATH shall have the following rights in the event the Contractor is deemed guilty of a breach of any term whatsoever of this Contract:

- a. The right to take over and complete the Work or any part thereof as agent for and at the expense of the Contractor, either directly or through others.
- b. The right to cancel this Contract as to any or all of the Work yet to be performed.
- c. The right to specific performance, an injunction or any appropriate equitable remedy.
- d. The right to money damages.

For the purpose of this Contract, breach shall include but not be limited to the following, whether or not the time has yet arrived for performance of an obligation under this Contract: a statement by the Contractor to any representative of PATH indicating that the Contractor cannot or will not perform any one or more of its obligations under this Contract; any act or omission of the Contractor or any other occurrence which makes it improbable at the time that it will be able to perform any one or more of its obligations under this Contract; any suspension of or failure to proceed with any part of the Work by the Contractor which makes it improbable at the time that it will be able to perform any one or more of its obligations under this Contract.

The enumeration in this numbered clause or elsewhere in this Contract of specific rights and remedies of PATH shall not be deemed to limit any other rights or remedies which PATH would have in the absence of such enumeration; and no exercise by PATH of any right or remedy shall operate as a waiver of any other of its rights or remedies not inconsistent therewith or to estop it from exercising such other rights or remedies.

7. Rights and Remedies of the Contractor

Inasmuch as the Contractor can be adequately compensated by money damages for any breach of this Contract which may be committed by PATH, the Contractor expressly agrees that no default, act or omission of PATH shall constitute a material breach of this Contract, entitling the Contractor to cancel or rescind this Contract or to suspend or abandon performance.

8. Submission To Jurisdiction

The Contractor hereby irrevocably submits itself to the jurisdiction of the Courts of the State of New York and New Jersey, in regard to any controversy arising out of, connected with, or in any way concerning this Contract.

The Contractor agrees that the service of process on the Contractor in relation to such jurisdiction may be made, at the option of PATH, either by registered or certified mail addressed to it at the address of the Contractor indicated on the signature sheet, or by actual personal delivery to the Contractor, if the Contractor is an individual, to any partner if the Contractor be a partnership or to any officer, director or managing or general agent if the Contractor be a corporation.

Such service shall be deemed to be sufficient when jurisdiction would not lie because of the lack of basis to serve process in the manner otherwise provided by law. In any case, however, process may be served as stated above whether or not it might otherwise have been served in a different manner.

9. Harmony

- a. The Contractor shall not employ any persons or use any labor, or use or have any equipment, or permit any condition to exist which shall or may cause or be conducive to any labor complaints, troubles, disputes or controversies at the Facility which interfere or are likely to interfere with the operation of PATH or with the operations of lessees, licensees or other users of the Facility or with the operations of the Contractor under this Contract.

The Contractor shall immediately give notice to the Port Authority (to be followed by written notices and reports) of any and all impending or existing labor complaints, troubles, disputes or controversies and the progress thereof. The Contractor shall use its best efforts to resolve any such complaint, trouble, dispute or controversy. If any type of strike, boycott, picketing, work stoppage, slowdown or other labor activity is directed against the Contractor at the Facility or against any operations of the Contractor under this Contract, whether or not caused by the employees of the Contractor, and if any of the foregoing, in the opinion of PATH, results or is likely to result in any curtailment or diminution of the services to be performed hereunder or to interfere with or affect the operations of PATH, or to interfere with or affect the operations of lessees, licensees, or other users of the Facility or in the event of any other cessation or stoppage of operations by the Contractor hereunder for any reason whatsoever, PATH shall have the right at any time during the continuance thereof to suspend the operations of the Contractor under this Contract, and during the period of the suspension the Contractor shall not perform its services hereunder and the Port Authority shall have the right during said period to itself or by any third person or persons selected by it to perform said services of the Contractor using the equipment which is used by the Contractor in its operations hereunder as PATH deems necessary and without cost to PATH. During such time of suspension, the Contractor shall not be entitled to any compensation. Any flat fees, including management fees, shall be prorated. Prior to the exercise of such right by PATH, it shall give the Contractor notice thereof, which notice may be oral. No exercise by PATH of the rights granted to it in the above subparagraph shall be or be deemed to be a waiver of any rights of termination or revocation contained in this Contract or a waiver of any rights or remedies which may be available to PATH under this Contract or otherwise.

- b. During the time that the Contractor is performing the Contract, other persons may be engaged in other operations on or about the worksite including Facility operations, pedestrian, bus and vehicular traffic and other Contractors performing at the worksite, all of which shall remain uninterrupted.

The Contractor shall so plan and conduct its operations as to work in harmony with others engaged at the site and not to delay, endanger or interfere with the operation of others (whether or not specifically mentioned above), all to the best interests of PATH and the public as may be directed by PATH.

10. Claims of Third Persons

The Contractor undertakes to pay all claims lawfully made against it by subcontractors, suppliers and workers, and all claims lawfully made against it by other third persons arising out of or in connection with or because of the performance of this Contract and to cause all subcontractors to pay all such claims lawfully made against them.

11. No Third Party Rights

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

12. Provisions of Law Deemed Inserted

Each and every provision of law and clause required by law to be inserted in this Contract shall be deemed to be inserted herein and the Contract shall be read and enforced as though it were included therein, and if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of either party, the Contract shall forthwith be physically amended to make such insertion.

13. Costs Assumed By The Contractor

It is expressly understood and agreed that all costs of the Contractor of whatever kind or nature and whether imposed directly upon the Contractor under the terms and provisions hereof or in any other manner whatsoever because of the requirements of the operation of the service or otherwise under this Agreement shall be borne by the Contractor or without compensation or reimbursement from PATH, except as specifically set forth in this Agreement. The entire and complete cost and expense of the Contractor's services and operations hereunder shall be borne solely by the Contractor and under no circumstances shall PATH be liable to any third party (including the Contractor's employees) for any such costs and expenses incurred by the Contractor and under no circumstances shall PATH be liable to the Contractor for the same, except as specifically set forth in this Section.

14. Default, Revocation or Suspension of Contract

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

1. If fire or other cause shall destroy all or a substantial part of the Facility.
2. If any governmental agency shall condemn or take a temporary or permanent interest in all or a substantial part of the Facility, or all of a part of PATH's interest herein;

then upon the occurrence of such event or at any time thereafter during the continuance thereof, PATH shall have the right on twenty-four (24) hours written notice to the Contractor to revoke this Contract, such revocation to be effective upon the date and time specified in such notice.

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

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

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

- appointment of a receiver, trustee, or liquidator of all or substantially all its property; or
2. By order or decree of a court the Contractor shall be adjudged bankrupt or an order shall be made approving a petition filed by any of the creditors, or, if the Contractor is a corporation, by any of the stockholders of the Contractor, seeking its reorganization or the readjustment of its indebtedness under the federal bankruptcy laws or under any law or statute of the United States or of any State thereof; or
 3. A petition under any part of the federal bankruptcy laws or an action under any present or future insolvency law or statute shall be filed against the Contractor and shall not be dismissed within thirty (30) days after the filing thereof; or
 4. The interest of the Contractor under this Contract shall be transferred to, passed to or devolve upon, by operation of law or otherwise, any other person, firm or corporation, or
 5. The Contractor, if a corporation, shall, without the prior written approval of the Port Authority, become a surviving or merged corporation in a merger, a constituent corporation in a consolidation, or a corporation in dissolution; or
 6. If the Contractor is a partnership, and the said partnership shall be dissolved as the result of any act or omission of its copartners or any of them, or by operation of law or the order or decree of any court having jurisdiction, or for any other reason whatsoever; or
 7. By or pursuant to, or under authority of any legislative act, resolution or rule, or any order or decree of any court or governmental board, agency or officer having jurisdiction, a receiver, trustee, or liquidator shall take possession or control of all or substantially all of the property of the Contractor and such possession or control of all or substantially all of the property of the Contractor and shall continue in effect for a period of fifteen (15) days;

then upon the occurrence of any such event or at any time thereafter during the continuance thereof, the PATH shall have the right upon five (5) days notice to the Contractor to terminate this Contract and the rights of the Contractor hereunder; termination to be effective upon the date and time specified in such notice as if said date were the date of the expiration of this Contract. Termination shall not relieve the Contractor of any liabilities or obligations hereunder which have accrued on or prior to the effective date of termination.

c. If any of the following shall occur:

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

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

d. If any of the events enumerated in this Section shall occur prior to commencement date of this Contract PATH upon the occurrence of any such event or any time thereafter during the continuance thereof by twenty-four (24) hours notice may terminate or suspend this Contract and the rights of

the Contractor hereunder, such termination or suspension to be effective upon the date specified in such notice.

- e. No payment by PATH of any monies to the Contractor for any period or periods after default of any of the terms, covenants or conditions hereof to be performed, kept and observed by the Contractor and no act or thing done or omitted to be done by PATH shall be deemed to be a waiver of the right of PATH to terminate this Contract or of any other right or remedies to which PATH may be entitled because of any breach thereof. No waiver by PATH of any default on the part of the Contractor in the performance of any of the terms, covenants and conditions hereof to be performed, kept or observed by the Contractor shall be or be construed to be a waiver by PATH of any other subsequent default in the performance of any of the said terms, covenants and conditions.
- f. In addition to all other rights of revocation or termination hereunder and notwithstanding any other provision of this Contract PATH may terminate this Contract and the rights of the Contractor hereunder without cause at any time upon five (5) days written notice to the Contractor and in such event this Contract shall cease and expire on the date set forth in the notice of termination as fully and completely as though such dates were the original expiration date hereof and if such effective date of termination is other than the last day of the month, the amount of the compensation due to the Contractor from PATH shall be prorated when applicable on a daily basis. Such cancellation shall be without prejudice to the rights and obligations of the parties arising out of portions already performed but no allowance shall be made for anticipated profits.
- g. Any right of termination contained in this paragraph, shall be in addition to and not in lieu of any and all rights and remedies that PATH shall have at law or in equity consequent upon the Contractor's breach of this Contract and shall be without prejudice to any and all such other rights and remedies. It is hereby specifically agreed and understood that the exercise by the Port Authority of any right of termination set forth in this paragraph shall not be or be deemed to be an exercise by the Port Authority of an election of remedies so as to preclude PATH from any right to money damages it may have for the period prior to the effective date of termination to the original expiration date of the Contract, and this provision shall be deemed to survive the termination of this Contract as aforesaid.
- h. If (1) the Contractor fails to perform any of its obligations under this Contract or any other agreement between PATH or the Port Authority and the Contractor (including its obligation to PATH or the Port Authority to pay any claim lawfully made against it by any supplier, subcontractor or worker or other person which arises out of or in connection with the performance of this Contract or any other agreement with PATH or the Port Authority) or (2) any claim (just or unjust) which arises out of or in connection with this Contract or any other agreement between PATH or the Port Authority and the Contractor is made against the Port Authority or PATH or (3) any subcontractor under this Contract or any other agreement between PATH or the Port Authority and the Contractor fails to pay any claims lawfully made against it by any supplier, subcontractor, worker or other third person which arises out of or in connection with this Contract or any other agreement between PATH or the Port Authority and the Contractor or if in the opinion of PATH or the Port Authority any of the aforesaid contingencies is likely to arise, then the Port Authority or PATH, as applicable, shall have the right, in its discretion, to withhold out of any payment (final or otherwise) such sums as PATH may deem ample to protect it against delay or loss or to assure the payment of just claims of third persons, and to apply such sums in such manner as PATH may deem proper to secure such protection or satisfy such claims. All sums so applied shall be deducted from the Contractor's compensation. Omission by PATH to withhold out of any payment, final or otherwise, a sum for any of the above contingencies, even though such contingency has occurred at the time of such payment, shall not be deemed to indicate that PATH does not intend to exercise its right with respect to such contingency. Neither the above provisions for rights of PATH to withhold and apply monies nor any exercise or attempted exercise of, or omission to exercise, such rights by

PATH shall create any obligation of any kind to such supplier, subcontractors, worker or other third persons. If, however, the payment of any amount due the Contractor shall be improperly delayed, PATH shall pay the Contractor interest thereon at the rate of 6% per annum for the period of the delay, it being agreed that such interest shall be in lieu of and in liquidation of any damages to the Contractor because of such delay.

- i. If PATH has paid any sum or has incurred any obligation or expense which the Contractor has agreed to pay or reimburse PATH, or if PATH is required or elects to pay any sum or sums or incurs any obligations or expense by reason of the failure, neglect or refusal of the Contractor to perform or fulfill any one or more of the conditions, covenants, or agreements contained in this Contract, or as a result of an act of omission of the Contractor contrary to the said conditions, covenants and agreements, the Contractor shall pay to PATH the sum or sums so paid or expense so incurred, including all interests, costs and damages, promptly upon the receipt of PATH's statement therefore. PATH may, however, in its discretion, elect to deduct said sum or sums from any payment payable by it to the Contractor.
- j. If PATH pays any installment to the Contractor without reducing said installment as provided in this Contract, it may reduce any succeeding installment by the proper amount, or it may bill the Contractor for the amount by which the installment paid should have been reduced and the Contractor shall pay to PATH any such amount promptly upon receipt of PATH's statement therefore.
- k. PATH shall also have the rights set forth above in the event the Contractor shall become insolvent or bankrupt or if his affairs are placed in the hands of a receiver, trustee or assignee for the benefit of creditors.

15. Sales or Compensating Use Taxes

Purchases of services and tangible personal property by PATH in the States of New York and New Jersey are generally exempt from state and local sales and compensating use taxes, and from most federal excises (Taxes). Therefore, PATH's purchase of the Contractor's services under this Contract is exempt from Taxes. Accordingly, the Contractor must not include Taxes in the price charged to PATH for the Contractor's services under this Contract. The Contractor certifies that there are no such taxes included in the prices for this Contract. The Contractor shall retain a copy of this Contract to substantiate the exempt sale.

The compensation set forth in this Agreement is the complete compensation to the Contractor, and PATH will not separately reimburse the Contractor for any taxes unless specifically set forth in this Agreement.

16. No Estoppel or Waiver

PATH shall not be precluded or estopped by any payment, final or otherwise, issued or made under this Contract, from showing at any time the true amount and character of the services performed, or from showing that any such payment is incorrect or was improperly issued or made; and PATH shall not be precluded or estopped, notwithstanding any such payment, from recovering from the Contractor any damages which it may sustain by reason of any failure on its part to comply strictly with this Contract, and any moneys which may be paid to it or for its account in excess of those to which it is lawfully entitled.

No cancellation, rescission or annulment hereof, in whole or as to any part of the services to be provided hereunder, or because of any breach hereof, shall be deemed a waiver of any money damages to which PATH may be entitled because of such breach. Moreover, no waiver by the Authority of any breach of this Contract shall be deemed to be a waiver of any other or any subsequent breach.

17. Records and Reports

The Contractor shall set up, keep and maintain (and shall cause its subcontractors to set up, keep and

maintain) in accordance with generally accepted accounting practice during the term of this Agreement and any extensions thereof and for three years after the expiration, termination or revocation thereof, records, payroll records and books of account (including, but not limited to, records of original entry and daily forms, payroll runs, cancelled checks, time records, union agreements, contracts with health, pension and other third party benefit providers) recording all transactions of the Contractor (and its subcontractors), at, through or in any way connected with or related to the operations of the Contractor (and its subcontractors) hereunder, including but not limited to all matters relating to the charges payable to the Contractor hereunder, all wages and supplemental benefits paid or provided to or for its employees (and its subcontractors' employees) and such additional information as PATH may from time to time and at any time require, and also including, if appropriate, recording the actual number of hours of service provided under the Contract, and keeping separate records thereof which records and books of account shall be kept at all times within the Port District. The Contractor shall permit (and cause its subcontractors to permit) in ordinary business hours during the term of this Agreement including any extensions thereof and for three years thereafter the examination and audit by the officers, employees and representatives of PATH of such records and books of account and also any records and books of account of any company which is owned or controlled by the Contractor, or which owns or controls the Contractor if said company performs services similar to those performed by the Contractor anywhere in the Port District. However, if within the aforesaid three year period PATH has notified the Contractor in writing of a pending claim by PATH under or in connection with this Contract to which any of the aforesaid records and documents of the Contractor or of its subcontractors relate either directly or indirectly, then the period of such right of access shall be extended to the expiration of six years from the date of final payment with respect to the records and documents involved.

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

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

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

18. General Obligations

- a. Except where expressly required or permitted herein to be oral, all notices, requests, consents and approvals required to be given to or by either party shall be in writing and all such notices, requests, consents and approvals shall be personally delivered to the other party during regular business hours or forwarded to such party by United States certified mail, return receipt requested, addressed to the other party at its address hereinbefore or hereafter provided. Until further notice the Contractor hereby designates the address shown on the bottom of the Contractors Signature Sheet as their address to which such notices, requests, consents, or approvals may be forwarded. All notices, requests, consents, or approvals of the Contractor shall be forwarded to the Superintendent/Manager at the Facility.

- b. The Contractor shall comply with the provisions of all present and future federal, state and municipal laws, rules, regulations, requirements, ordinances, orders and directions which pertain to its operations under this Contract and which affect the Contract or the performance thereof and those engaged therein as if the said Contract were being performed for a private corporation, except where stricter requirements are contained in the Contract in which case the Contract shall control. The Contractor shall procure for itself all licenses, certificates, permits or other authorization from all governmental authorities, if any, having jurisdiction over the Contractor's operations hereunder which may be necessary for the Contractor's operations. The Contractor's obligation to comply with governmental requirements is not to be construed as a submission by PATH or the Port Authority to the application to itself of such requirements.
- c. The Contractor shall pay all taxes, license, certification, permit and examination fees and excises which may be assessed on its property or operations hereunder or income therefrom, and shall make all applications, reports and returns required in connection therewith.
- d. The Contractor shall, in conducting its operations hereunder, take all necessary precautions to protect the general environment and to prevent environmental pollution, contamination, damage to property and personal injury. In the event the Contractor encounters material reasonably believed to be asbestos, polychlorinated biphenyl (PCB) or any other hazardous material, in conducting its operations hereunder, the Contractor shall immediately stop Work in the area affected and report the condition in writing to the Superintendent/Manager. Work in the affected area shall not thereafter be resumed by the Contractor except upon the issuance of a written order to that effect from the Superintendent/Manager.
- e. The Contractor shall promptly observe, comply with and execute the provisions of any and all present and future rules and regulations, requirements, standard orders and directions of the American Insurance Association, the Insurance Services Office, National Fire Protection Association, and any other body or organization exercising similar functions which may pertain or apply to the Contractor's operations hereunder.

The Contractor shall not do or permit to be done any act which:

- 1. will invalidate or be in conflict with any fire insurance policies covering the Facility or any part thereof or upon the contents of any building thereon; or
 - 2. will increase the rate of any fire insurance, extended coverage or rental insurance on the Facility or any part thereof or upon the contents of any building thereon; or
 - 3. in the opinion of PATH will constitute a hazardous condition, so as to increase the risk normally attendant upon the operations contemplated by this Contract; or
 - 4. may cause or produce in the premises, or upon the Facility any unusual, noxious or objectionable smoke, gases, vapors, odors; or
 - 5. may interfere with the effectiveness or accessibility of the drainage and sewerage system, fire protection system, sprinkler system, alarm system, fire hydrants and hoses, if any, installed or located or to be installed or located in or on the Facility; or
 - 6. shall constitute a nuisance in or on the Facility or which may result in the creation, commission or maintenance of a nuisance in or on the Facility.
- f. If by reason of the Contractor's failure to comply with the provisions of this Section and provided PATH has given the Contractor five (5) days written notice of its failure and the Contractor shall not have cured said failure within said five (5) days, any fire insurance, extended coverage or rental insurance rate on the Facility or any part thereof or upon the contents of any building thereon shall at any time be higher than it otherwise would be, then the Contractor shall on demand pay PATH that part of all fire insurance, extended coverage or rental insurance premiums paid or payable by PATH which shall have been charged because of such violations by the Contractor.
 - g. The Contractor shall conduct its operations hereunder so as not to endanger, unreasonably interfere with, or delay the operations or activities of any tenants or occupants on the premises or the Facility and, moreover, shall use the same degree of care in performance on the premises as would be required by

- law of PATH and shall conduct operations hereunder in a courteous, efficient and safe manner.
- h. The Contractor shall provide such equipment and medical facilities as may be necessary to supply first aid service in case of accidents to its personnel who may be injured in the furnishing of service hereunder. The Contractor shall maintain standing arrangements for the removal and hospital treatment of any of its personnel who may be injured.

19. Assignments and Subcontracting

- a. The Contractor shall not sell, transfer, mortgage, pledge, subcontract or assign this Contract or any part thereof or any of the rights granted hereunder or any moneys due or to become due to it hereunder or enter into any contract requiring or permitting the doing of anything hereunder by an independent Contractor, without the prior written approval of PATH, and any such sale, transfer, mortgage, pledge, subcontract, assignment or contract without such prior written approval shall be void as to PATH.
- b. All subcontractors who provide permanent personnel to the Contractor for work under this Contract shall be given written notice to comply with all requirements of the Contract. The Contractor shall be responsible and liable for the performance and acts of each subcontractor.
- c. All persons to whom the Contractor sublets services shall be deemed to be its agents and no subletting or approval thereof shall be deemed to release this Contractor from its obligations under this Contract or to impose any obligations on PATH to such subcontractor or to give the subcontractor any rights against PATH.

20. Indemnification and Risks Assumed By The Contractor

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

The Contractor assumes the following risks, whether such risks arise from acts or omissions (negligent or not) of the Contractor, PATH, the Port Authority, or third persons (including Contractor's employees, employees, officers, and agents of PATH and the Port Authority) or from any other cause, excepting only risks occasioned solely by affirmative willful acts of PATH or the Port Authority, as applicable, done subsequent to the opening of proposals on this Contract, and shall to the extent permitted by law indemnify PATH and the Port Authority for all loss or damage incurred in connection with such risks:

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

- c. The risk of claim, whether made against the Contractor, the Port Authority or PATH, for any and all loss or damages occurring to any property, equipment (including but not limited to automotive and/or mobile equipment), materials and possessions of the Contractor's agents, employees, materialmen and others performing work hereunder.
- d. The risk of claims for injuries, damage or loss of any kind just or unjust of third persons arising or alleged to arise out of the performance of work hereunder, whether such claims are made against the Contractor, the Port Authority or PATH.

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

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

21. Approval of Methods

Neither the approval of PATH of the methods of furnishing services hereunder nor the failure of PATH to call attention to improper or inadequate methods or to require a change in the method of furnishing services hereunder, nor the failure of PATH to direct the Contractor to take any particular precautions or to refrain from doing any particular thing shall relieve the Contractor of its liability for injuries to persons or damage to property or environmental impairment arising out of its operations.

22. Safety and Cleanliness

- a. The Contractor shall, in the furnishing of services hereunder, exercise every precaution to prevent injury to person or damage to property or environmental impairment and avoid inconvenience to the occupants of or any visitors to the Facility. The Contractor shall, without limiting the generality hereof, place such personnel, erect such barricades and railings, give such warnings, display such lights, signals or signs, place such cones and exercise precautions as may be necessary, proper or desirable.
- b. The Contractor shall in case of unsafe floor conditions due to construction, wetness, spillage, sickness and all other types of hazardous conditions proceed to rope off the unsafe area and place appropriate warnings signs to prevent accidents from occurring. The Contractor shall clean said area to the satisfaction of the Superintendent/Manager.
- c. The Contractor shall at all times maintain in a clean and orderly condition and appearance any and all facilities provided by PATH for the Contractor's operations, and all fixtures, sink closets, equipment, and other personal property of PATH which are located in said facilities.

23. Accident Reports

The Contractor shall promptly report in writing to the Manager of the Facility and to the Deputy Chief, Litigation Management of the Port Authority all accidents whatsoever arising out of or in connection with

its operations hereunder and which result in death or injury to persons or damage to property, setting forth such details thereof as PATH may desire. In addition, if death or serious injury or serious damage is caused, such accidents shall be immediately reported by telephone to the aforesaid representatives of PATH (or the Port Authority, as applicable).

24. Trash Removal

The Contractor shall remove daily from the Facility by means provided by the Contractor all garbage, debris and other waste material (solid or liquid) arising out of or in connection with its operations hereunder, and any such garbage, debris and other waste material not immediately removed shall be temporarily stored in a clear and sanitary condition, approved by the Superintendent/Manager and shall be kept covered except when filling or emptying them. The Contractor shall exercise care in removing such garbage, debris and other waste materials from the Facility. The manner of such storage and removal shall always be subject in all respects to the continual approval of PATH. No equipment or facilities of PATH shall be used in such removal unless with its prior consent in writing. No such garbage, debris or other waste materials shall be or be permitted to be thrown, discharged or disposed into or upon the waters at or bounding the Facility.

25. Lost and Found Property

The Contractor shall instruct its personnel that all items of personal property found by the Contractor's employees at the Site must be turned in to PATH and a receipt will be issued therefor.

26. Property of the Contractor

- a. All property of the Contractor at the Site by virtue of this Contract shall be removed on or before the expiration or sooner termination or revocation of this Contract.
- b. If the Contractor shall fail to remove its property upon the expiration, termination or revocation of this Contract PATH may, at its option, dispose of such property as waste or as agent for the Contractor and at the risk and expense of the Contractor, remove such property to a public warehouse, or may retain the same in its own possession, and in either event after the expiration of thirty (30) days may sell the same in accordance with any method deemed appropriate; the proceeds of any such sale shall be applied first, to the expenses of sale and second, to any sums owed by the Contractor to PATH; any balance remaining shall be paid to the Contractor. Any excess of the total cost of removal, storage and sale and other costs incurred by PATH as a result of such failure of performance by the Contractor over the proceeds of sale shall be paid by the Contractor to PATH upon demand.

27. Modification of Contract

This Contract may not be changed except in writing signed by PATH and the Contractor. The Contractor agrees that no representation or warranties shall be binding upon PATH unless expressed in writing in this Contract.

28. Invalid Clauses

If any provision of this Contract shall be such as to destroy its mutuality or to render it invalid or illegal, then, if it shall not appear to have been so material that without it the Contract would not have been made by the parties, it shall not be deemed to form part thereof but the balance of the Contract shall remain in full force and effect.

29. Approval of Materials, Supplies and Equipment

Only Port Authority/PATH approved materials, supplies, and equipment are to be used by the Contractor in performing the Work hereunder. Inclusion of chemical containing materials or supplies on the Port Authority/ PATH Approved Products List – Environmental Protection Supplies constitutes approval. The list may be revised from time to time and at any time by the Port Authority/PATH and it shall be incumbent upon the Contractor to obtain the most current list from the Superintendent/Manager of the Facility.

At anytime during the Solicitation, pre-performance or performance periods, the Contractor may propose the use of an alternate product or products to those on the Approved Products List – Environmental Protection Supplies, which product(s) shall be subject to review and approval by the Port Authority. Any alternate product so approved by the Port Authority/PATH may be used by the Contractor in performing the Services hereunder. Until such approval is given, only products on the Approved Products List – Environmental Protection Supplies may be used.

30. Intellectual Property

The right to use all patented materials, appliances, processes of manufacture or types of construction, trade and service marks, copyrights and trade secrets, collectively hereinafter referred to as “Intellectual Property Rights”, in the performance of the work, shall be obtained by the Contractor without separate or additional compensation. Where the services under this Agreement require the Contractor to provide materials, equipment or software for the use of PATH/the Port Authority or its employees or agents, PATH/the Port Authority shall be provided with the Intellectual Property Rights required for such use without further compensation than is provided for under this Agreement.

The Contractor shall indemnify PATH and the Port Authority against and save it harmless from all loss and expense incurred as a result of any claims in the nature of Intellectual Property Rights infringement arising out of the Contractor’s or PATH or the Port Authority’s use, in accordance with the above immediately preceding paragraph, of any Intellectual Property. The Contractor, if requested, shall conduct all negotiations with respect to and defend such claims. If the Contractor, the Port Authority or PATH, its employees or agents be enjoined either temporarily or permanently from the use of any subject matter as to which the Contractor is to indemnify PATH, or the Port Authority as applicable, against infringement, then PATH, or the Port Authority as applicable, may, without limiting any other rights it may have, require the Contractor to supply temporary or permanent replacement facilities approved by the Superintendent/Manager, and if the Contractor fails to do so the Contractor shall, at its expense, remove all such enjoined facilities and refund the cost thereof to PATH or the Port Authority, as applicable, or take such steps as may be necessary to insure compliance by the Contractor, and PATH (or the Port Authority, as applicable) with said injunction, to the satisfaction of PATH or the Port Authority as applicable.

In addition, the Contractor shall promptly and fully inform the Director/General Manager in writing of any intellectual property rights disputes, whether existing or potential, of which it has knowledge, relating to any idea, design, method, material, equipment or any other matter related to the subject matter of this Agreement or coming to its attention in connection with this Agreement.

31. Contract Records and Documents – Passwords and Codes

When the performance of the contract services requires the Contractor to produce, compile or maintain records, data, drawings, or documents of any kind, regardless of the media utilized, then all such records, drawings, data and documents which are produced, prepared or compiled in connection with this contract, shall become the property of PATH (or the Port Authority as applicable), and PATH (or the Port Authority as applicable) 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.

When in the performance of the contract services the Contractor utilizes passwords or codes for any purpose, at any time during or after the performance of such services, upon written request by PATH (or the Port Authority as applicable), the Contractor shall make available to the designated PATH (or the Port Authority as applicable) representative all such passwords and codes.

32. Designated Secure Areas

Services under the Contract may be required in designated secure areas, as the same may be designated by

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

Forty-eight (48) hours prior to the proposed performance of any work in a Secure Area, the Contractor shall notify the Superintendent/Manager. The Contractor shall conform to the procedures as may be established by the Superintendent/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 Contractor shall request a description from the Superintendent/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 Superintendent/Manager during the term of the Contract.

33. Notification of Security Requirements

PATH 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, PATH reserves the right to deny access to certain documents, sensitive security construction sites and facilities (including rental spaces) to any person that declines to abide by Port Authority or PATH security procedures and protocols, any person with a criminal record with respect to certain crimes or who may otherwise pose a threat to the construction site or facility security. The Authority and PATH reserve the right to impose multiple layers of security requirements on the Contractor, its staff and subcontractors and their staffs depending upon the level of security required, or may make any amendments with respect to such requirements as determined by the Authority and/or PATH.

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

- Execution of Port Authority Approved Non-disclosure Agreements

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

- Contractor/ Subcontractor identity checks and background screening

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

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

As of January 29, 2007, the Secure Worker Access Consortium (S.W.A.C.) is the only Port Authority approved provider to be used to conduct background screening and personal identity verification, except as otherwise required by federal law and/or regulation (such as the Transportation Worker Identification Credential for personnel performing in secure areas at Maritime facilities). Information about S.W.A.C., instructions, corporate enrollment, online applications, and location of processing centers can be found at <http://www.secureworker.com>, or S.W.A.C. may be contacted directly at (877) 522-7922 for more information and the latest pricing. The cost for said background checks for staff that pass and are granted a credential shall be reimbursable to the Contractor (and its subcontractors) as an out-of-pocket expense

as provided herein. Staff that are rejected for a credential for any reason are not reimbursable.

- Issuance of Photo Identification Credential

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

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

- Access control, inspection, and monitoring by security guards

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

- Compliance with the Port Authority Information Security Handbook

The Contract may require access to Port Authority or PATH information considered Protected Information ("PI") as defined in the Port Authority Information Security Handbook ("Handbook"), dated October, 2008, corrected as of November 14, 2013, and as may be further amended. The Handbook and its requirements are hereby incorporated into this agreement and will govern the possession, distribution and use of PI if at any point during the lifecycle of the project or solicitation it becomes necessary for the Contractor to have access to PI. Protecting sensitive information requires the application of uniform safeguarding measures to prevent unauthorized disclosure and to control any authorized disclosure of this information within the Port Authority or when released by the Port Authority to outside entities. The following is an outline of some of the procedures, obligations and directives contained in the Handbook:

- (1) require that the Contractor and subcontractors, when appropriate, sign Non-Disclosure Agreements (NDAs), or an Acknowledgment of an existing NDA, provided by the Authority as a condition of being granted access to Confidential Information categorized and protected as per the Handbook;
- (2) require that individuals needing access to PI be required to undergo a background check, pursuant to the process and requirements noted in § 3.2 of the Information Security Handbook.

- (3) require Contractors and commercial enterprises to attend training to ensure security awareness regarding Port Authority and PATH information;
- (4) specific guidelines and requirements for the handling of PI to ensure that the storage and protection of PI;
- (5) restrictions on the transfer, shipping, and mailing of PI;
- (6) prohibitions on the publication, posting, modifying, copying, reproducing, republishing, uploading, transmitting, or distributing PI on websites or web pages. This may also include restricting persons, who either have not passed a pre-screening background check, or who have not been granted access to PI, from viewing such information;
- (7) require that PI be destroyed using certain methods, measures or technology pursuant to the requirements set forth in the Handbook;
- (8) require the Contractor to mandate that each of its subcontractors maintain the same levels of security required of the Contractor under any Port Authority or PATH awarded contract.
- (9) prohibit the publication, exchange or dissemination of PI developed from the project or contained in reports, except between Contractors and subcontractors, without prior approval of the Port Authority;
- (10) require that PI only be reproduced or copied pursuant to the requirements set forth in the Handbook.

- Audits for Compliance with Security Requirements

The Port Authority and/or PATH may conduct random or scheduled examinations of business practices under this section entitled "NOTIFICATION OF SECURITY REQUIREMENTS" and the Handbook in order to assess the extent of compliance with security requirements, Protected 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.

34. Construction In Progress

The Contractor recognizes that construction may be in progress at the Facility and may continue throughout the term of this Contract. Notwithstanding, the Contractor shall at all times during the term hereof maintain the same standards of performance and cleanliness as prevails in non-affected areas as required by the standards hereunder.

35. Permit-Required Confined Space Work

Prior to commencement of any work, the Contractor shall request and obtain from PATH a description of all spaces at the facility which are permit-required confined spaces requiring issuance of an OSHA permit.

Prior to the commencement of any work in a permit-required confined space at a Port Authority facility requiring issuance of an OSHA permit, the Contractor shall contact the Superintendent/Manager to obtain a PATH Contractor Permit-Required Confined Space Notification form. The notification form must be filled out and submitted prior to commencing permit-required confined space work. All confined space work shall be performed in accordance with all applicable OSHA requirements. The Contractor shall provide its employees with a copy of its own company permit and shall furnish PATH with a copy of the permit upon completion of the work. The Contractor must supply all equipment required for working in a confined space.

36. Signs

Except with the prior written approval of PATH, the Contractor shall not erect, maintain or display any signs or posters or any advertising on or about the Facility.

37. Vending Machines, Food Preparation

The Contractor shall not install, maintain or operate on the Facility, or on any other PATH property, any

vending machines without the prior written approval of the Port Authority. No foods or beverages shall be prepared or consumed at the Facility by any of the Contractor's employees except in areas as may be specifically designated by PATH for such purpose.

38. Confidential Information/Non-Publication

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

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 November 14, 2013)*, Protected Information, Confidential Proprietary Information, Confidential Privileged Information and information that is labeled, marked or otherwise identified by or on behalf of the Authority so as to reasonably connote that such information is confidential, privileged, sensitive or proprietary in nature. Confidential Information shall also include all work product that contains or is derived from any of the foregoing, whether in whole or in part, regardless of whether prepared by the Authority or a third-party or when the Authority receives such information from others and agrees to treat such information as Confidential.

c. The Contractor shall hold all such confidential information in trust and confidence for the Authority, and agrees that the Contractor and the personnel provided by the Contractor hereunder shall not, during or after the termination or expiration of this Contract, disclose to any person, firm or corporation, nor use for its own business or benefit, any information obtained by it under or in connection with the supplying of services contemplated by this Contract. The Contractor and the personnel provided by the Contractor hereunder shall not violate in any manner any patent, copyright, trade secret or other proprietary right of the Authority or third persons in connection with their services hereunder, either before or after termination or expiration of this Contract. The Contractor and the personnel provided by the Contractor 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 Contractor shall promptly and fully inform the Director/General Manager in writing of any patent, copyright, trade secret or other intellectual property rights or disputes, whether existing or potential, of which the Contractor has knowledge, relating to any idea, design, method, material, equipment or other matter related to this Contract or coming to the Contractor's attention in connection with this Contract.

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

39. Time is of the Essence

Time is of the essence in the Contractor's performance of this Contract inasmuch as the Work to be performed will affect the operation of public facilities.

40. Holidays

The following holidays will be observed at the Site:

New Year's Day	Labor Day
Martin Luther King Jr. Day	Columbus Day
Presidents' Day	Election Day
Memorial Day	Veterans Day
Independence Day	Thanksgiving Day
	Christmas Day

This list is subject to periodic revision and the Contractor shall be responsible for obtaining all updated lists from the office of the Superintendent/Manager. If any such holiday falls on a Sunday then the next day shall be considered the holiday and/or if any such holiday falls on a Saturday then the preceding day shall be considered the holiday.

41. Personnel Standards

In addition to any specific personnel requirements that may be required under the clause entitled "Personnel Requirements" in the Specifications, the Contractor (and any Subcontractor) shall furnish competent and adequately trained personnel to perform the Work hereunder. If, in the opinion of the Superintendent/Manager, any employee so assigned is performing their functions unsatisfactorily, they shall be replaced by the Contractor within twenty-four (24) hours following the Contractor's receipt of the Superintendent/Manager's request for such replacement.

All Contractor's employees performing Work hereunder shall have the ability to communicate in the English language to the extent necessary to comprehend directions given by either the Contractor's supervisory staff or by the Superintendent/Manager's staff. Any employee operating a motor vehicle must have a valid driver's license.

The Contractor shall verify that employees working under this Contract in the United States are legally present in the United States and authorized to work by means of the federally required I-9 program

42. General Uniform Requirements for Contractor's Personnel

In addition to any specific uniform requirements that may be required by the Specifications, uniforms must be worn at all times during which the Services are being performed hereunder. The Contractor agrees that his/her employees will present a neat, clean and orderly appearance at all times. Uniforms shall include the Contractor's identification badge with picture ID bearing the employee's name. All uniforms, colors, types and styles shall be subject to the prior approval of the Superintendent/Manager. The Contractor will also be responsible for ensuring that its employees are wearing shoes appropriate for the tasks performed. The Superintendent/Manager shall have the right to require removal of any employee who shall fail to wear the proper uniform and shoes, and the exercise of this right shall not limit the obligation of the Contractor to perform the Services or to furnish any required number of employees at a specific location at the Site as specified.

43. Labor, Equipment and Materials Supplied by the Contractor

The Contractor shall, at all times during the performance of this Contract, furnish all necessary labor, supervision, equipment and materials necessary for the prompt and efficient performance of the Work, whether such materials and equipment are actually employed in the furnishing of the Work or whether incidental thereto.

All materials used by the Contractor in furnishing Work hereunder shall be of such quality as to accomplish the purposes of this Contract and the Services to be furnished hereunder in such manner so as not to damage any part of the Site.

PATH by its officers, employees and representatives shall have the right at all times to examine the supplies, materials and equipment used by the Contractor, to observe the operations of the Contractor, its agents, servants and employees and to do any act or thing which PATH may be obligated or have the right to do under this Contract or otherwise.

All equipment, materials and supplies used in the performance of this Contract required hereunder shall be used in accordance with their manufacturer's instructions.

Materials and supplies to be provided by the Contractor hereunder shall comply with OSHA and all applicable regulations.

44. Contractor's Vehicles – Parking - Licenses

At the discretion of the Superintendent/Manager, PATH may permit the Contractor during the effective period of this Contract to park vehicle(s) used by it in its operations hereunder in such location as may from time to time or at any time be designated by the Superintendent/Manager. The Contractor shall comply with such existing rules, regulations and procedures as are now in force and such reasonable future rules, regulations and procedures as may hereafter be adopted by PATH for the safety and convenience of persons who park automotive vehicles in any parking area at the Site or for the safety and proper persons who park automotive vehicles in any parking area at the Site or for the safety and proper identification of such vehicles, and the Contractor shall also comply with any and all directions pertaining to such parking which may be given from time to time and at any time by the Superintendent/Manager. Any vehicle used by the Contractor hereunder shall be marked or placarded, identifying it as the Contractor's vehicle.

45. Superintendent/Manager's Authority

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

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

46. Price Preference

If this solicitation has not been set aside for the purposes of making an award based on bids solicited from Port Authority certified Minority Business, Women Business or Small Business Enterprises as indicated by the bidder pre-requisites in Part II hereof, for awards of contracts, not exceeding \$1,000,000, for:

- (a) Services, a price preference of 5% is available for New York or New Jersey Small Business Enterprises (SBE); or
- (b) Services (excluding Janitorial/Cleaning Services), a price preference of 10% is available for New York or New Jersey Minority or Women Business Enterprises (M/WBE),

certified by the Port Authority by the day before the bid opening.

If the Bidder is a Port Authority certified MBE, WBE or SBE, enter the applicable date(s) certification was obtained in the space provided on the Signature Sheet attached hereto.

47. M/WBE Good Faith Participation

If specified as applicable to this Contract, the Contractor shall use every good-faith effort to provide for participation by certified Minority Business Enterprises (MBEs) and certified Women-owned Business Enterprises (WBEs) as herein defined, in all purchasing and subcontracting opportunities associated with this Contract, including purchase of equipment, supplies and labor services.

Good Faith efforts to include participation by MBEs/WBEs shall include the following:

- a. Dividing the services and materials to be procured into small portions, where feasible.
- b. Giving reasonable advance notice of specific contracting, subcontracting and purchasing opportunities to such MBEs/WBEs as may be appropriate.
- c. Soliciting services and materials, to be procured, from the Directory of MBEs/WBEs, a copy of which can be obtained on the Port Authority Website at <http://www.panynj.gov/business-opportunities/supplier-diversity.html> or by contacting the Port Authority's Office of Business Diversity and Civil Rights at (212) 435-7819 or seeking MBEs/WBEs from other sources.
- d. Insuring that provision is made to provide progress payments to MBEs/WBEs on a timely basis.
- e. Observance of reasonable commercial standards of fair dealing in the respective trade or business.

Either prior or subsequent to Contract award, the Contractor may request a full or partial waiver of the M/WBE participation goals set forth in this Contract by providing documentation demonstrating to the Manager, for approval by the Port Authority's Office of Business Diversity and Civil Rights, that its good faith efforts did not result in compliance with the goals set forth above because participation by eligible M/WBEs could not be obtained at a reasonable price or that such M/WBEs were not available to adequately perform as subcontractors. The Contractor shall provide written documentation in support of its request to the Manager. The documentation shall include, but not be limited to, documentation demonstrating good faith efforts as described above, which may include, proof that the Authority's directory does not contain M/WBEs in this specific field of work, a list of organizations contacted to obtain M/WBEs, and/or a list of M/WBEs contacted and their price quotes. If approved by the Authority's Office of Business Diversity and Civil Rights, the Manager will provide written approval of the modified or waived M/WBE Participation Plan.

Subsequent to Contract award, all changes to the M/WBE Participation Plan must be submitted via a modified M/WBE Participation Plan to the Manager for review and approval by the Authority's Office of Business Diversity and Civil Rights. For submittal of modifications to the M/WBE Plan, Contractors are directed to use form PA3749C, which may be downloaded at <http://www.panynj.gov/business-opportunities/become-vendor.html>. The Contractor shall not make changes to its approved M/WBE Participation Plan or substitute M/WBE subcontractors or suppliers for those named in their approved plan without the Manager's prior written approval. Unauthorized changes or substitutions, including performing the work designated for a subcontractor with the Contractor's own forces, shall be a violation of this section. Progress toward attainment of M/WBE participation goals set forth herein will be monitored throughout the duration of this Contract.

The Contractor shall also submit to the Manager, along with invoices, the Statement of Subcontractor Payments as the M/WBE Participation Report, annexed hereto as an attachment. The Statement must include the name and business address of each M/WBE subcontractor and supplier actually involved in the Contract, a description of the work performed and/or product or service supplied by each such subcontractor or supplier, the date and amount of each expenditure, and such other information that may assist the Manager in determining the Contractor's compliance with the foregoing provisions.

If, during the performance of this Contract, the Contractor fails to demonstrate good faith efforts in carrying out its M/WBE Participation Plan and the Contractor has not requested and been granted a full or partial waiver of the M/WBE participation goals set forth in this Contract, the Authority will take into consideration the Contractor's failure to carry out its M/WBE Participation Plan in its evaluation for award of future Authority contracts.

PART III CONTRACTOR'S INTEGRITY PROVISIONS

1. Certification of No Investigation (criminal or civil anti-trust), Indictment, Conviction, Debarment, Suspension, Disqualification and Disclosure of Other Information

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

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

2. Non-Collusive Bidding, and Code of Ethics Certification, Certification of No Solicitation Based On Commission, Percentage, Brokerage, Contingent or Other Fees

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

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

- b. the prices quoted in its bid have not been and will not be knowingly disclosed directly or indirectly by the Bidder prior to the official opening of such bid to any other bidder or to any competitor;
- c. no attempt has been made and none will be made by the Bidder to induce any other person, partnership or corporation to submit or not to submit a bid for the purpose of restricting competition;
- d. this organization has not made any offers or agreements or taken any other action with respect to any Authority employee or former employee or immediate family member of either which would constitute a breach of ethical standards under the Code of Ethics dated April 11, 1996, (a copy of which is available upon request) nor does this organization have any knowledge of any act on the part of an Authority employee or former Authority employee relating either directly or indirectly to this organization which constitutes a breach of the ethical standards set forth in said Code;
- e. no person or selling agency other than a bona fide employee or bona fide established commercial or selling agency maintained by the Bidder for the purpose of securing business, has been employed or retained by the Bidder to solicit or secure this Contract on the understanding that a commission, percentage, brokerage, contingent, or other fee would be paid to such person or selling agency; and
- f. the Bidder has not offered, promised or given, demanded or accepted, any undue advantage, directly or indirectly, to or from a public official or employee, political candidate, party or party official, or any private sector employee (including a person who directs or works for a private sector enterprise in any capacity), in order to obtain, retain, or direct business or to secure any other improper advantage in connection with this Contract.
- g. no person or organization has been retained, employed or designated on behalf of the Bidder to impact any Port Authority determination, where the solicitation is a Request for Proposals, with respect to (i) the solicitation, evaluation or award of this Contract, or (ii) the preparation of specifications or request for submissions in connection with this Contract.

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

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

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

In any case where the Bidder cannot make the foregoing certifications, the Bidder shall so state and shall furnish with the signed bid a signed statement which sets forth in detail the reasons therefor. If the Bidder is uncertain as to whether it can make the foregoing certifications, it shall so indicate in a signed statement furnished with its bid, setting forth in such statement the reasons for its uncertainty. With respect to the foregoing certification in paragraph "2g", if the Bidder cannot make the certification, it shall provide, in writing, with the signed bid: (i) a list of the name(s), address(es), telephone number(s), and place(s) of principal employment of each such individual or organization; and (ii) a statement as to whether such individual or organization has a "financial interest" in this Contract, as described in the Procurement Disclosure policy of the Authority (a copy of which is available upon request to the Director of the

Procurement Department of the Authority). Such disclosure is to be updated, as necessary, up to the time of award of this Contract. As a result of such disclosure, the Port Authority shall take appropriate action up to and including a finding of non-responsibility.

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

Notwithstanding that the Bidder may be able to make the foregoing certifications at the time the bid is submitted, the Bidder shall immediately notify the Authority in writing during the period of irrevocability of bids and the term of the Contract, if Bidder is awarded the Contract, of any change of circumstances which might under this clause make it unable to make the foregoing certifications, might render any portion of the certifications previously made invalid, or require disclosure. The foregoing certifications or signed statement shall be deemed to have been made by the Bidder with full knowledge that they would become a part of the records of the Authority and that the Authority will rely on their truth and accuracy in awarding and continuing this Contract. In the event that the Authority should determine at any time prior or subsequent to the award of this Contract that the Bidder has falsely certified as to any material item in the foregoing certifications, has failed to immediately notify the Port Authority of any change in circumstances which might make it unable to make the foregoing certifications, might render any portion of the certifications previously made invalid, or require disclosure, or has willfully or fraudulently furnished a signed statement which is false in any material respect, or has not fully and accurately represented any circumstance with respect to any item in the foregoing certifications required to be disclosed, the Authority may determine that the Bidder is not a responsible Bidder with respect to its bid on the Contract or with respect to future bids on Authority contracts and may exercise such other remedies as are provided to it by the Contract with respect to these matters. In addition, Bidders are advised that knowingly providing a false certification or statement pursuant hereto may be the basis for prosecution for offering a false instrument for filing (see e.g. New York Penal Law, Section 175.30 et seq.). Bidders are also advised that the inability to make such certification will not in and of itself disqualify a Bidder, and that in each instance the Authority will evaluate the reasons therefor provided by the Bidder. Under certain circumstances the Bidder may be required as a condition of Contract award to enter into a Monitoring Agreement under which it will be required to take certain specified actions, including compensating an independent Monitor to be selected by the Port Authority, said Monitor to be charged with, among other things, auditing the actions of the Bidder to determine whether its business practices and relationships indicate a level of integrity sufficient to permit it to continue business with the Port Authority.

3. Bidder Eligibility for Award of Contracts - Determination by an Agency of the State of New York or New Jersey Concerning Eligibility to Receive Public Contracts

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

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

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

4. Contractor Responsibility, Suspension of Work and Termination

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

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

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

5. No Gifts, Gratuities, Offers of Employment, Etc.

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

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

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

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

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

The Contractor shall include the provisions of this clause in each subcontract entered into under this Contract.

6. Conflict of Interest

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

7. Definitions

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

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

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

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

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

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

If the solicitation is a Request for Proposal:

Bid - shall mean Proposal;

Bidder - shall mean Proposer;

Bidding - shall mean submitting a Proposal.

In a Contract resulting from the taking of bids:

Bid - shall mean bid;

Bidder - shall mean Bidder; except and until the Contract has been awarded, then it shall mean

Contractor

Bidding - shall mean executing this Contract.

In a Contract resulting from the taking of Proposals:

Bid - shall mean Proposal;

Bidder - shall mean Proposer;

Bidding - shall mean executing this Contract.

ATTACHMENT D- PROPOSER REFERENCE FORM

Name of Proposer: _____

Please provide a list of references on the firm's performance of similar work within the last five (5) years, including all current contracts. Use additional sheets as necessary.

Include the following information for each reference:

Customer Name: _____

Address: _____

Contact Name and Title: _____

Phone and Fax Numbers of Contact: _____

Contract date(s): _____

Contract cost: _____

Description of work:

Customer Name: _____

Address: _____

Contact Name and Title: _____

Phone and Fax Numbers of Contact: _____

Contract date(s): _____

Contract cost: _____

Description of Work:

Customer Name: _____

Address: _____

Contact Name and Title: _____

Phone and Fax Numbers of Contact: _____

Contract date (s): _____

Contract cost: _____

Description of work: _____

PROCUREMENT M/WBE PARTICIPATION PLAN

Office of Business Diversity and Civil Rights

NOTE: The Proposer/Bidder shall submit to the Manager, Line/Facility Dept. Form PA 3749C - MODIFIED PLAN for any changes to the original plan: i.e.; subcontractor, dollar amount or work performed. If more than 1 page is used, complete totals on last page.

PAGE: _____ OF _____

Purchase Order #: _____ **Contract Description:** _____
Proposer/Bidder Name: _____
Mailing Address: _____ **Contract Amount:** _____
Telephone Number: _____ **Contract Goals:** _____ **MBE** _____ **WBE** _____

Name, Address, Phone Number of PA Certified M/WBE subcontractor (including name of contact person)	Indicate MBE or WBE	Description of Work, Services to be provided. Where applicable, specify, "supply" or "install" or both "supply" and "install."	Anticipated date work will start and finish	Approximate \$ amount of M/WBE Subcontract	M/WBE % of Total Contract Amount
TOTAL:					

Signature of Contractor: _____
 Print Name: _____
 Title: _____ Date _____

FOR OBDCR USE ONLY
 Contract Goals: Approved Waived Rejected
 Reviewed by: _____ OBDCR Business Development Representative
 Print Name: _____ Date _____

INSTRUCTIONS

PROPOSER INSTRUCTIONS: In accordance with Section 6. MWBE Subcontracting Provisions, the proposer shall submit this form as the MWBE Participation Plan and/or good faith documentation as part of Section 8. Proposal Submission Requirements.

BIDDER INSTRUCTIONS: In accordance with Part 1, Section 17 of the contract book, the bidder shall submit this form as the MWBE Participation Plan and/or best efforts documentation with their bid to the Procurement Department.

MANAGER/DESIGNEE INSTRUCTIONS: After a review of the submitted MWBE Participation plan, forward to the Office of Business Diversity and Civil Rights via fax at (212) 435-7828 or PAD to 233PAS 4th Floor for review and approval. Approved/waived/rejected plan will be returned within 5 business days of receipt of this document. Manager/Designee will advise vendor of the results of the MWBE Participation Plan review.

ATTACHMENT F- STATEMENT OF SUBCONTRACTOR PAYMENTS

INSTRUCTIONS FOR STATEMENT OF SUBCONTRACTOR PAYMENT

Attached is the Statement of Subcontractor Payments form, which shall be submitted with every invoice to be used in conjunction with the M/WBE Participation Plan.

STATEMENT OF SUBCONTRACTOR PAYMENTS

PA3968 / 03-09

M/WBE Participation Report

Instructions for Statement of Subcontractor Payment: To be submitted with every invoice to be used in conjunction with the M/WBE Participation Plan.

Contract/PO No.: _____ Date of Invoice: _____

Contract Title: _____ Committed M/WBE Goals: M _____ W _____

Prime Contractor Name: _____

Contract/PO Amount: _____ Award Date: _____

Completion Date: _____

PA Project Manager: _____ M/WBE Participation to Date: M _____ W _____

Subcontractor's Name	Address & Phone #	Description of Work Performed or Materials Supplied	M/WBE Status	Total Contract Amount Awarded	Total Previous Requests	Amount Paid to Date	Amount of This Request

In connection with the above-captioned contract: I HEREBY DECLARE AND AFFIRM that I am a duly authorized representative of this company, and that the following Minority and Women Business Enterprises have been contracted with and have furnished, or are furnishing and preparing materials for, and have done or are doing labor on the above captioned contract; that there is due and to become due them, the amounts set opposite their names for materials or labor as stated, and that this is a full, true, and complete statement of all such MBEs/WBEs and of the amounts paid, due, and to become due to them.

Signature _____ Print Name _____ Title _____ Date _____

ATTACHMENT G - Certified Environmentally Preferable Products/Practices

Proposer Name: _____ Date: _____

In line with the Port Authority's efforts to promote products and practices which reduce our impact on the environment and human health, Proposers are encouraged to provide information regarding their environmentally preferable/sustainable business practices as they relate to this contract wherever possible. Proposers **must** complete this form and submit it with their response, if appropriate. Proposers **must** submit appropriate documentation to support the items for which the Proposer indicates a "Yes" and present this documentation in the proper sequence of this Attachment.

1. Packaging

Has the Proposer implemented any of the following environmental initiatives? (A checkmark indicates "Yes")

- _____ Use of corrugated materials that exceed the EPA recommended post-consumer recycled content
- _____ Use of other packaging materials that contain recycled content and are recyclable in most local programs
- _____ Promotes waste prevention and source reduction by reducing the extent of the packaging and/or offering packaging take-back services, or shipping carton return
- _____ Reduces or eliminates materials which have been bleached with chlorine or chlorine derivatives
- _____ Eliminates any packaging that may contain polyvinyl chloride (PVC), or polystyrene or heavy metals

If yes, a description of the practices being followed must be included with the submission.

2. Business Practices / Operations / Manufacturing

Does the Proposer engage in practices that serve to reduce or minimize an impact to the environment, including, but not necessarily limited to, the following items? (A checkmark indicates "Yes")

- _____ Recycles materials in the warehouse or other operations
- _____ Use of alternative fuel vehicles or vehicles equipped with diesel emission control devices for delivery or transportation purposes
- _____ Use of energy efficient office equipment or signage or the incorporation of green building design elements
- _____ Use of recycled paper (that meets federal specifications) in their marketing and/or resource materials
- _____ Other sustainable initiative

If yes, a description of the practices being followed must be included with the submission.

3. Training and Education

Does the Proposer conduct/offer a program to train or inform customers and employees of the environmental benefits of the products to be offered under this contract, and/or does the Proposer conduct environmental training of its own staff?

- Yes No If yes, Proposer must attach a description of the training offered and the specific criteria targeted by the training.

4. Certifications

Has the Proposer or any of its manufacturers and/or subcontractors obtained any of the following product / industry certifications? (A checkmark indicates "Yes")

- _____ ISO 14000 or adopted some other equivalent environmental management system
- _____ Other industry environmental standards (where applicable), such as the CERES principles, LEED Certification, C2C Protocol, Responsible Care Codes of Practice or other similar standards
- _____ Third Party product certifications such as Green Seal, Scientific Certification Systems, Smartwood, etc.

If yes, Proposers must attach copies of the certificates obtained.

5. Other Environmental Criteria

Proposers are encouraged to respond to criteria specifically indicated in this RFP as "Management Approach" (and attach the appropriate documentation) to receive consideration in the evaluation.

I hereby certify, under penalty of the law that the above statements are true and correct.

_____ Name _____ Date

ATTACHMENT H – Exhibit I

List of PA/PATH Facilities*

- Brooklyn Piers
- George Washington Bridge
- Holland Tunnel
- Harrison Car Maintenance Facility
- John F. Kennedy International Airport
- Journal Square Transportation Center
- LaGuardia Airport
- Lincoln Tunnel
- 5 Marine View Plaza
- Newark Legal & Communication Center
- Newark International Airport
- New Jersey Marine Terminal
- New York Marine Terminal
- Port Authority Bus Terminal
- Port Authority Trans-Hudson Corp. (PATH – Located at JSTC)
- Port Authority Technical Center
- Port Newark
- Staten Island Bridges
- Stewart Airport
- Teleport
- Gateway
- 225 Park Avenue South
- 233 Park Avenue South
- 2 Montgomery
- 225 Broadway
- WTC Site

*Collection sites may be added or deleted on an as needed basis.