June 28, 2019

SUBJECT: REQUEST FOR PROPOSALS FOR PERFORMANCE OF PROFESSIONAL CLAIMS ADMINISTRATION SERVICES FOR THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY SELF-INSURED WORKERS’ COMPENSATION PROGRAM DURING 2019 - 2022 (RFP#58035)

Dear Sir or Madam:

The Port Authority of New York and New Jersey (the “Authority”) is seeking Proposals in response to this Request for Proposals (RFP) for a Third-Party Administrator (“the TPA” or “you”) to provide professional claims administration services for the Authority’s self-insured workers’ compensation program for a three (3) year period beginning November 1, 2019 through October 31, 2022. At the Authority's discretion, this Agreement may be extended for an additional three (3) year period, ending October 31, 2025.

The scope of work to be performed by you are set forth in Attachment A to the Authority’s Standard Agreement (the “Agreement”), included herewith. You should carefully review this Agreement as it is the form of agreement that the Authority intends that you sign in the event of acceptance of your Proposal and forms the basis for the submission of Proposals.

I. PROPOSER REQUIREMENTS

The Authority will consider proposals only from those firms able to demonstrate compliance with each of the following qualification requirements:

A. Licensed Third Party Administrator by the New York State Workers’ Compensation Board and in good standing with the New Jersey Division of Workers’ Compensation. All adjusters must hold a NYS adjusters license, or equivalent. A copy of the accreditation, license(s) and other appropriate documentation must be attached.

B. SSAE18/SOC 2, Type 2 Audit Certification - a copy of the most recently completed audit report must be attached.

C. Maintain a fully functional claims office in New York and/or New Jersey, as required to administer the Authority’s Workers Compensation Claims Program.

D. The firm, its principals, claims adjusters and examiners servicing the Authority must have a minimum of five (5) years’ experience in administering both New York and New Jersey Workers’ Compensation claims immediately prior to the submission of proposals hereunder.

E. Currently providing claims administration services for at least three (3) clients within New York and/or New Jersey with one (1) of these clients being of comparable size to that of the Authority (approximately 6,000 employees).

If the proposal is submitted by a common law joint venture, a joint venture that has not been established as a distinct legal entity, each participant of the joint venture shall be held jointly and severally liable and must individually execute and perform all acts required by this proposal. Documents signed by a common law joint venture, in connection with this proposal, shall include the names of all participants of the joint venture followed by the words “acting jointly and severally.” The Authority will be the sole judge of whether a Proposer meets said requirements.
II. PROPOSAL FORMAT REQUIREMENTS

To respond to this RFP, the Proposer shall submit a concise Proposal complying with the following basic criteria:

A. To be acceptable, proposals shall be of no more than 26 pages-single-sided or 13 pages-double-sided using 12 point or greater font size, not including the resumes. Each resume shall be a maximum of two-pages single-sided, or one-page double sided, using 12 point or greater font size. The page limit pertains only to letters G, H and I in Section III below. The Proposal pages shall be numbered and bound, or in a 3-ring binder, with Your Legal Firm Name and RFP Number 58035 clearly indicated on the cover.

B. Separate each section of the Proposal with a tab divider that is labeled in accordance with the section letter of the Submission Requirements specified below.

C. All Proposals must be delivered in sealed envelopes and/or packages addressed to: The Port Authority of New York and New Jersey, 4 World Trade Center, 21st Floor, New York, NY 10007, Attention: RFP Custodian. You are required to submit one (1) reproducible original, six (6) copies, and seven (7) compact disc (CD) copies of your Proposal for review. USB Flash Drives will not be accepted. Notwithstanding retention of the CDs, in case of conflict, the reproducible original of the Proposals, if awarded, shall take precedence over material on the CDs.

D. To ensure the appropriate handling of your submission, the Proposer shall use its FULL LEGAL NAME WITHOUT ABBREVIATIONS on any return address label, and on any information submitted on the CDs, as well as on the reproducible original and copies of the Proposal. Failure to comply with this requirement may lead to a delay in consideration of your proposal, and thereby delay contract award. Any such delays shall be the responsibility of the Proposer.

E. Your Proposal should be received in sufficient time so that the Authority receives it no later than 2:00 p.m. Eastern Time on July 25, 2019. The cover of your submittal, as well as the outside of the package, must include the RFP Number and Title as indicated in the “Subject” line above. The Authority assumes no responsibility for delays caused by any delivery services.

If your Proposal is hand-delivered, please note that only individuals with proper identification (e.g. photo identification) will be permitted access to the Authority’s offices. Individuals without proper identification will be turned away and their packages not accepted.

There is extensive security at the World Trade Center Site. You must present a valid government-issued photo ID to enter 4 WTC. Individuals without packages or carrying small packages, envelopes or boxes that can be conveyed by hand or on a hand truck may enter through the lobby. All packages, envelopes and boxes may be subject to additional security screening. There is no parking available at 4 WTC/150 Greenwich Street, and parking in the surrounding area is extremely limited. Express carrier deliveries by commercial vehicles will only be made via vendors approved by Silverstein Properties, the WTC Property Manager, through the Vehicle Security Center (VSC). Please note that use of the U.S. Mail does not guarantee delivery to Authority offices by the below listed due date for submittals. Proposers using the U.S. Mail are advised to allow sufficient delivery time to ensure timely receipt of their proposals. Presently, UPS is the only delivery vendor with approved recurring delivery times. UPS makes deliveries to 4 WTC around 9:30 a.m.
each day. Please plan your submission accordingly. As additional express carriers may be approved by Silverstein Properties and scheduled for recurring delivery times with the VSC, this information may be updated. Under certain circumstances, a solicitation may allow for a commercial vehicle to be approved to make a delivery in accordance with the VSC procedures. If applicable, the specific solicitation document will include that information. The Port Authority assumes no responsibility for delays, including, but not limited to, delays caused by any delivery services, building access procedures, or security requirements.

III. SUBMISSION REQUIREMENTS:
To respond to this RFP, proposals shall provide the following information:

A. Agreement on Terms of Discussion
In accordance with Authority policy, you are requested to include in the front of your Proposal, a copy of Attachment B – “Agreement on Terms of Discussion”, signed by an officer of your company.

B. Company Profile
Submit a completed copy of Attachment C – “Company Profile”

C. Transmittal Letter
Each Proposer shall submit a transmittal letter on its letterhead, signed by an authorized representative, demonstrating compliance with each of the aforementioned “Proposer Requirements” listed above. Your transmittal letter shall also include the following:

1. A statement indicating whether the TPA is proposing as a single entity or joint venture. If a joint venture, submit all information required for a single entity for each participant in the joint venture. If the Proposer is a joint venture and seeks to propose as such, the joint venture Proposer must meet the prerequisites. All the qualification information required for a single entity shall be submitted for each participant in the joint venture. If a joint venture submits a proposal, all participants in the joint venture shall be bound jointly and severally, and each participant shall execute the Proposal. If a joint venture is deemed qualified to receive an invitation to deliver a formal presentation of how it proposes to perform the Work outlined herein, the joint venture shall be composed of the same participants as were in the joint venture when it submitted the Proposal. No substitution of participants will be allowed without the express prior written permission of the Authority.

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

D. Staff’s Qualifications and Experience
This section shall introduce a dedicated claims team (including subconsultants, if any) that will be assigned to perform the services described in Attachment A.
1. For each dedicated team member, provide a summary of qualifications including claims handling experience, indemnity case load, experience working with self-insured public entities, education, and any professional designations and awards. Attach a detailed resume for each member of the proposed service team that includes their names, titles, length of service in your organization, relevant experience and specific areas of expertise.

2. Include an estimated staffing analysis for the performance of each task listed in Attachment A. The staffing analysis should give a detailed breakdown identifying assigned staff, staff position title, and hours of work per person/per task. Provide the percentage of each 8-hour workday that will be dedicated by each staff member, including supervisory and technical personnel, to the Authority in the performance of these services.

E. Cost Proposal

Submit a completed copy of Attachment D – “Cost Proposal Form.” As indicated on the form, provide fixed annual fees for each year of this Agreement (including each option year, should the Authority choose to exercise them) for providing the subject services as specified in Attachment A. Include assumptions for all open claims, new indemnity, new medical only, new first aid, and all future medical claims. The fully annual fee is the amount to be paid to you and is full compensation for all staff costs, profit, overhead, transition fees, etc...

F. Performance Guarantee

Indicate your willingness to agree to a performance guarantee, subject to mutual agreement between your company and the Authority. Include your suggestions regarding the performance areas to be measured, how they would be measured and at what intervals. Include a sample of your standard performance guarantee.

G. Firm Qualifications and Experience

Submit your firm’s statement of qualifications and experience in providing the services specified in Section I - “Proposer Requirements” – including subconsultants, if any. Describe your experience doing business with self-insured public entities in New York/New Jersey. Disclose any affiliations that your firm may have with managed care providers, insurance carriers, brokers, or other insurance industry companies. For all engagements referenced, include the name of the company, a brief description and the value of services performed, industry sector, period of time services are/were provided, annual compensation, and a contact person and current telephone number for verification purposes.

H. Technical Approach

Describe your overall information technology (IT) structure, including what platform(s) you use in your IT systems – e.g., does your firm have a single-source data warehouse, or do you rely on separate modules for check writing, reserving, and notes? Describe in detail your proposed technical approach to perform each task stated in Attachment A to demonstrate to the Authority the ability of your firm to address the specific technical areas of the required claims administration services – including any tasks that may be required but that have not been identified in Attachment A. Factors detailed in your technical approach shall include, but are not limited to, your proposed technical methodology and strategy as well as a detailed description of the capabilities of any specific claims and risk management information system(s), software or other technology you may employ to perform such services.
Provide a detailed transition plan, including time required to complete each transition, to complete the electronic data conversion(s) to your system and the transportation of hard copy files to your claims office.

Explain the data security measures you have in place, the rules for degree of access and client training. Provide details and a copy of the executive summary for your disaster recovery plan.

I. Management Approach

Provide a detailed description of the proposed management approach to be taken in performance of the required services. This shall include, but shall not be limited to:

1. A staff organization chart that identifies the key individuals who will be assigned to perform the services requested, their firms, work locations, and a clear management structure for sharing project responsibilities, work allocation, oversight, deliverable, costs and reporting responsibilities across multiple offices during performance of the services stipulated in Attachment A. For all intended subconsultant(s), indicate their MBE/WBE status with the Authority.

2. Your proposed organizational structure shall be responsive to the Authority’s needs; shall include your approach and schedule(s) for keeping the Authority apprised of its workers’ compensation program status, if applicable; and shall ensure the quality and timeliness of the services to be performed.

J. M/WBE Participation

Your attention is directed to Paragraph 16 of the Agreement in which the Authority has stated the Minority Business Enterprises (MBEs) and Women-owned Business Enterprises (WBE) goals for participation in this program. Submit details on how you intend to meet these goals. A listing of certified MBE/WBE firms is available at http://www.panynj.gov/business-opportunities/sd-mini-profile.html.

The TPA shall include its MBE/WBE Participation Plan (Form PA 3760C) with its Proposal, to be reviewed and approved by the Authority’s Office of Business Diversity and Civil Rights (OBDCR). The MBE/WBE Plan submitted by the TPA to the Authority shall contain, at a minimum, the following:

- Identification of MBE/WBEs: Provide the names and addresses of all MBE/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 Agreement.
- Level of Participation: Indicate the percentage of MBE/WBE participation expected to be achieved with the arrangement described in the Plan.
- Scope of Work: Describe the specific scope of work the MBE/WBEs will perform.

All MBE/WBE subconsultants listed on the MBE/WBE Participation Plan must be certified by the Authority in order for the TPA to receive credit toward the MBE/WBE goals set forth in this Agreement. Please go to http://www.panynj.gov/business-opportunities/supplier-diversity.html to search for MBE/WBEs by a particular commodity or service. The Authority makes no representation as to the financial responsibility of these firms or their ability to perform work under this Agreement.
Subsequent to Agreement award, all changes to the MBE/WBE Participation Plan must be submitted via a modified MBE/WBE Participation Plan to the Manager for review and approval by OBDCR. For submittal of modifications to the MBE/WBE Plan, TPAs are directed to use form PA3760D. The TPA shall not make changes to its approved MBE/WBE Participation Plan or substitute MBE/WBE subconsultants or suppliers for those named in their approved plan without the Manager’s prior written approval. Unauthorized changes or substitutions, including performance of work designated for a subconsultant by the TPA’s own forces, shall be deemed a violation of this section. Progress toward attainment of MBE/WBE participation goals set forth herein will be monitored by the Authority throughout the duration of the Agreement.

The TPA shall also submit to the Project Manager, along with invoices, the Statement of Subcontractor Payments in the form of the MBE/WBE Participation Report, which may be downloaded at [http://www.panynj.gov/business-opportunities/becomevendor.html](http://www.panynj.gov/business-opportunities/becomevendor.html). The Statement must include the name and business address of each MBE/WBE subconsultant and supplier actually involved in the Agreement, a description of the work performed and/or the product or service supplied by each such subcontractor/subconsultant or supplier, the date and amount of each expenditure, and such other information as it may assist the Project Manager in determining the TPA’s compliance with the foregoing provisions.

**MBE/WBE Conditions of Participation**

MBE/WBE participation will be counted toward meeting the MBE/WBE agreement goal, subject to all of the following conditions:

1. **Commercially Useful Function:** An MBE/WBE is considered to perform a commercially useful function when it is responsible for the execution of a distinct element of work on a contract and carries out its responsibilities by actually performing, managing, and supervising the work involved in accordance with normal industry practice. Regardless of whether an arrangement between the TPA and the MBE/WBE represents standard industry practice, if the arrangement erodes the ownership, control or independence of the MBE/WBE or in any other way does not meet the commercially useful function requirement, that firm shall not be included in determining whether the MBE/WBE goal is met and shall not be included in MBE/WBE reports. If this occurs with respect to a firm identified as a MBE/WBE, the TPA will receive no credit toward the MBE/WBE goal and may be required to backfill the participation. An MBE/WBE does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction or contract through which funds are passed in order to obtain the appearance of MBE/WBE participation. An MBE/WBE may rebut a determination by the Authority that the MBE/WBE is not performing a commercially useful function to the Authority.

2. **Work Force:** The MBE/WBE must employ a work force (including administrative and clerical staff) separate and apart from that employed by the TPA, other subcontractors/subconsultants on the Agreement, or their affiliates. This does not preclude the employment by the MBE/WBE of an individual that has been previously employed by another firm involved in the Agreement, provided that the individual was independently recruited by the MBE/WBE in accordance with customary industry practice. The routine transfer of work crews from another employer to the MBE/WBE shall not be allowed.
3. Supervision: All work performed by the MBE/WBE must be controlled and supervised by the MBE/WBE without duplication of supervisory personnel from the TPA, other subconsultants on the agreement, or their affiliates. This does not preclude routine communication between the supervisory personnel of the MBE/WBE and other supervisors necessary to coordinate the work.

**Counting MBE/WBE Participation**

The value of the work performed by an MBE/WBE, with its own equipment, with its own forces, and under its own supervision will be counted toward the goal, provided the utilization is a commercially useful function. An MBE/WBE prime contractor/TPA shall still provide opportunities for participation by other MBE/WBEs. Work performed by MBE/WBEs will be counted as set forth below. If the Authority determines that some or all of the MBE/WBEs work does not constitute a commercially useful function, only the portion of the work considered to be a commercially useful function will be credited toward the goal.

1. Subconsultants: One hundred percent (100%) of the value of the work to be performed by an MBE/WBE subconsultant will be counted toward the MBE/WBE goal. The value of such work includes the cost of materials and supplies purchased by the MBE/WBE, except the cost of supplies or equipment leased from the TPA, other subconsultants or their affiliates will not be counted. When an MBE/WBE subcontracts part of the work of its contract to another firm, the value of the subconsultant work may be counted toward MBE/WBE goals only if the MBE/WBE subconsultant is itself a MBE/WBE. Work that a MBE/WBE subcontracts to a non-MBE/WBE firm does not count toward MBE/WBE goals.

2. Material Suppliers: Sixty percent (60%) of the expenditure to an MBE/WBE material supplier will be counted toward the MBE/WBE goal. Packagers, brokers, manufacturer’s representatives, or other persons who arrange or expedite transactions are not material suppliers within the meaning of this paragraph.

3. Broker’s/Manufacturer’s Representatives: One hundred percent (100%) of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees for transportation charges for the delivery of materials or supplies provided by an MBE/WBE broker/manufacturer’s representative will be counted toward the MBE/WBE goal, provided they are determined by the Authority to be reasonable and not excessive as compared with fees or commissions customarily allowed for similar services. The costs of materials and supplies themselves will not be counted.

4. Services: One hundred percent (100%) of fees or commissions charged by an MBE/WBE for providing a bona fide service, such as professional, technical, consultant, or managerial services, or for providing bonds or insurance specifically required for the performance of the work will be counted toward the MBE/WBE goal, provided the fee is reasonable and not excessive as compared with fees customarily allowed for similar services.

5. Joint Venture: Joint ventures between MBE/WBEs and non-MBE/WBEs may be counted toward the MBE/WBE goal in proportion to the total dollar value of the Agreement equal to the distinct, clearly defined portion of the work of the contract that the MBE/WBE
performs with its own forces. Contact OBDCR at (201) 395-3958 for more information about requirements for such joint ventures.

K. Affiliates
Include a complete list of your firm’s affiliates.

L. Conflict of Interest
If the Proposer or any employee, agent or subcontractor/subconsultant of the Proposer may have 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 Authority reserves the right to disqualify the Proposer if, in its sole discretion, any interest disclosed from any source could create, or give the appearance of, a conflict of interest. The Authority's determination regarding any question(s) of conflict of interest shall be final.

M. Agreement Exceptions
The selected TPA(s) shall comply with the requirements of the Agreement. You should therefore not make any changes in this Agreement, nor restate any of its provisions in your Proposal or supporting material. However, if you have any specific exceptions, such exceptions should be set forth in a separate letter included with your response to this RFP. The Authority is under no obligation to entertain or accept any such specific exceptions. Exceptions raised at a time subsequent to proposal submission will not be accepted. The scope of tasks to be performed by you is set forth in Attachment A to the Authority’s Agreement.

IV. SELECTION PROCESS:
The qualifications-based selection shall take into consideration the following technical criteria, (listed in order of importance) and subsequently cost, as appropriate:

A. Qualifications and experience of the staff, including subconsultants proposed to perform the services hereunder;

B. Qualifications and experience of the firm, including the quality of similar services provided to others including the demonstrated ability to complete the services in accordance with the program requirements

C. Management Approach to the performance of the contemplated services.

D. Technical Approach to the performance of the contemplated services; and;

After consideration of these factors, the Authority may enter into negotiations with the firm(s) deemed best qualified in terms of the foregoing factors to perform the required services.

V. ORAL PRESENTATIONS
After review of all Proposals, an oral presentation to the selection committee and others, as appropriate, may be requested. It should be noted that firms selected to make presentations may be given short advance notice. Presentations will be limited to 30 minutes and should include material contained in your Proposal. The presentation will be followed by an approximately 30-minute question and answer session. Proposer’s staff making the presentation shall be led by the proposed lead actuary assigned to the account, who may be supported by no more than two (2) other senior staff members proposed to work on this project. Notification of presentation scheduling will be made by email. Please provide the name,
telephone number, and email address of the person who should be contacted for presentation scheduling, as well as an alternate in the event that person is unavailable.

VI. ADDITIONAL INFORMATION:

The Port Authority embraces a workplace where the values of diversity and inclusion support varying perspectives and backgrounds to produce a richer environment.

The Port Authority expects all our TPAs, consultants, contractors and vendors, to demonstrate a similar commitment, and undertake every effort to ensure their project teams represent the diverse makeup of the communities in and around the Port District.

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

It is Authority policy that its TPAs, consultants, contractors and vendors comply with the legal requirements of the States of New York and New Jersey. Your attention is therefore called to New York State’s requirements that certain TPAs, consultants, contractors, affiliates, subcontractors/subconsultants and subcontractors/subconsultants’ affiliates register with the New York State Department of Taxation and Finance for the purpose of collection and remittance of sales and use taxes. Similarly, New Jersey requires business organizations to obtain appropriate Business Registration Certificates from the Division of Revenue of the State’s Department of the Treasury.

Proposers are also advised that additional vendor information, including but not limited to forms, documents and other related information, may be found on the Authority website at www.panynj.gov or http://www.panynj.gov/business-opportunities/become-vendor.html.

After a review of all Proposals received, the Authority will forward two (2) copies of the Agreement and Attachment A thereto to the selected firm(s) who shall sign and return both copies. Signature shall be by a corporate officer. The return of one copy executed by the Authority will effectuate the Agreement.

Should you have any questions, please contact Jessica Smith, Solicitation Manager, at JLSmith@panynj.gov. All such correspondence must have your name, title, company, mailing address, telephone number, and state “RFP 58035” in the subject line. The Authority must receive all questions no later than 4:00 P.M. Eastern Time, seven (7) working days before the RFP due date. Neither Ms. Smith, nor any other employee of the Authority is authorized to interpret the provisions of this RFP or accompanying documents or give additional information as to their requirements. If interpretation or additional information is required, it will be communicated by written addendum issued by the undersigned and such writing shall form a part of this RFP, or the accompanying documents, as appropriate. For RFP updates and Addenda, if any, Proposers are encouraged to access, and monitor, the Authority website at http://www.panynj.gov/business-opportunities/bid-proposal-advertisements.html. You should, therefore, monitor the advertisement on said website, as appropriate, to ensure you are aware of changes, if any.
Proposal preparation costs are not reimbursable by the Authority. The Authority shall have no obligation to a firm except under a duly authorized agreement executed by the Authority.

No rights accrue to any Proposer except under a duly authorized agreement for performance of the specified services.

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

Sincerely,

David Gutiérrez
Assistant Director
Procurement Department

Attachments
ATTACHMENT A

PERFORMANCE OF PROFESSIONAL CLAIMS ADMINISTRATION SERVICES FOR
THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY
SELF-INSURED WORKERS' COMPENSATION PROGRAM
DURING 2019 THROUGH 2022

I. BACKGROUND
For background with respect to The Port Authority of New York and New Jersey (the “Authority”) see www.panynj.gov. Additionally, the most recent electronic version of the Authority’s Annual Report is available at http://www.panynj.gov/corporateinformation/annual-reports.html.

The Authority has been an authorized self-insured employer in the states of New York and New Jersey since 1935 and 1951 respectively. A Third-Party Administrator has provided administration services for the self-insured workers’ compensation program since 1998. Prior to 1998, the Authority was self-administrated. See reference documents identified in Section IV, below, for a comprehensive summary of the Authority’s Workers' Compensation procedures and claims history.

The Treasury Department's Risk Financing Division is responsible for the overall corporate insurance programs of the Authority, which includes a workers' compensation team that manages the self-insured, third party administered self-insured workers' compensation program.

II. SCOPE OF WORK
Professional claims administration services from a qualified Third-Party Administrator ("TPA") in connection with the administration of the Authority’s self-insured workers’ compensation claims. The Authority seeks a service provider with experience in public entity workers’ compensation self-insurance that promotes a preemptive safety and claims handling approach to manage and administer benefits in accordance with New York and New Jersey State Laws and Statutes with a focus on quality care coupled with timely, cost effective claims administration.

Any and all certifications, licenses, or similar documentation requested of the TPA for the performance of the subject services shall be valid and in effect at all times while the TPA is performing any of the subject services.

III. DESCRIPTION OF TPA’S TASKS
All TPA submittals are subject to the review and approval of the Authority. The TPA shall revise submittals as required by the Authority and resubmit as final. All requests for data, materials, etc. required to perform the following tasks are to be submitted to the Authority in writing. Tasks to be performed by the TPA shall include but not be limited to:

TASK A. ACCOUNT MANAGEMENT
The TPA shall establish a dedicated claims unit, whose sole responsibility is the administration of the Authority’s workers’ compensation claims. The TPA shall designate a full time, qualified Claims Account Supervisor to manage the service agreement and act as the primary point of
contact for the Authority. Adjuster caseloads must not exceed standard statewide best practices by type of loss and complexity.

Please provide a staffing plan as requested in this document. If for any reason the Authority finds, in its sole discretion, that the service provided by any assigned personnel is insufficient or unsatisfactory, the TPA agrees to add additional, or assign replacement personnel that must be approved by Authority.

**TASK B. CLAIMS ADMINISTRATION**

1. Upon receipt of the First Report of Injury, the TPA shall begin the administration process with the establishment of a claims file that should include automatic completion, and statutory filing, of a New Claim Summary Report with a copy sent to the Authority including the assigned claim number. All claim files, within the laws regarding medical information, are to be made available for review by the Authority anytime during the TPA’s regular business hours.

2. The Authority must be notified immediately, via telephone and e-mail, of all newly reported catastrophic claims (threshold to be determined) upon receipt of the first notice of loss.

3. The adjusters will perform and provide: (i) three-point contact within 24 hours of report with the injured worker, employer, and treating physician; obtain recorded statements of the injured worker (other civilians, witnesses, supervisors, and doctors, as needed), all possible reports, photographs and diagrams of the scene, and use video when appropriate; (ii) in-depth claims investigations on all lost-time claims and are required to complete an initial investigation within 7 days from date of receipt of the claim. All final lost-time investigations will include a compensability determination plan of action within 14 days of receipt of the claim, or earlier; (iii) third-party investigations; (iv) prior loss history and medical records; (v) diligent monitoring of lost time; (vi) aggressive use of Independent Medical Evaluations and Functional Capacity Evaluations; (vii) offset, lien and credit analysis; and (viii) proper notification to excess carriers of potential claims in accordance with the terms of the carrier’s service agreement.

4. Complete a thorough analysis of relevant factors to determine compensability and coordinate recommendations with the Authority for settlement/disposition of claims. Settlement evaluations will be made promptly based on coverage, liability, damages, and available defenses and will be documented in the claim file. Final settlement authority shall rest with the Authority. Claim Petitions must be forwarded to the Authority for timely assignment of counsel.

5. All claim-related phone conversations, discussions, meetings, supervisory directives and action plans must be clearly detailed and documented in the claim file. All Action Plans must be comprehensive, list specific steps to bring each claim to closure as expeditiously as possible at the lowest possible cost and must be updated every 90 days or sooner as needed.

6. Assess and evaluate the nature and extent of each claim for purposes of establishing claim reserves at ultimate probable cost for medical, indemnity and legal expenses within 90 days from the first notice of loss in accordance with the Authority’s best practices. All indemnity claims are to be reported to the Index Bureau upon receipt of first report and re-indexed every six (6) months for the life of the claim. All first aid claims must be flagged with notice to the Authority and identified as first aid on all loss run reports. Invoice payments for first aid claims shall be determined by the Authority.
7. Establish banking arrangements, in conjunction with the Authority, to pay medical/legal and other expenses incurred as well as benefit payments to which eligible employees are entitled. Provide monthly check register and bank reconciliation statements, as well as daily funds transfer requests, to the Authority. Issue federal Form 1099 to all parties, as appropriate, utilized by the TPA in the performance of services related to this Agreement.

8. All payments to claimants, providers and vendors must be made promptly and within the statutory requirements. Complete and submit payroll adjustments on lost time claims with salary continuation to the Authority. All lost time claims require that 24-hour contact be made and documented to the injured employee, treating physician’s office, and employee’s supervisor.

9. Each open claim must be reviewed no less than every ninety (90) days depending upon the nature and complexity of the claim.

10. Timely and appropriate referral of claims to designated network medical management providers. All open "medical only" claims shall be reviewed for closing every thirty (30) days.

11. Monitor the frequency and appropriateness of medical treatment after authorization by the Authority's Office of Medical Services. Documented follow-up to the treating physician(s) is required no later than every thirty (30) days prior to Maximum Medical Improvement status. Ongoing disability will be documented through ongoing medical reports. Work with Authority’s Office of Medical Services to control medical treatment.

12. Schedule independent medical examinations as needed and approved by the Authority. Transitional/modified duty must be documented in the claim file and include the medical diagnosis, work restrictions, and estimated duration of disability.

13. Audit all hospital and medical provider charges for compliance with the fee schedule(s) or with usual and customary rates.

14. Must provide monthly reports broken down by facility, i.e. date of loss, accident description, injury description, lost time status, and accident state.

15. Establish and maintain a hard copy and electronic file of each new and run-off claim.

16. The adjuster will discuss with the Authority all pertinent facts when recommending denying compensability or prior to reversing a denial. All denial letters will be approved by the Authority prior to issuing.

17. Utilize nurse case management services, with prior approval, to control cost(s) where indicated. Nurse case manager’s (NCM) action plans and notes must be documented in the claim file, and as appropriate NCM’s will participate in claim reviews or when consultation with the NCM is requested by the Authority.

18. Appropriate and timely contact must be made with all injured employees who are out on temporary disability to monitor treatment programs to ensure proper care, avoid over treatment situations and control timely return to work. Assist in developing policies and procedures to ensure that the return to work by, or reassignment of, injured employees is consistent with the medical findings. The adjuster must provide proper notification to the Authority regarding projected, anticipated and actual return to work dates.
19. Utilization of outside services, such as surveillance vendors for questionable claims, must be pre-approved by the Authority. All problem cases identified must be documented and reported to the Authority within 48 hours to allow for immediate and appropriate corrective action. Problem cases include, but are not limited to: malingering, fraud, failure to cooperate, refusal of medical treatment, etc.

20. Written Case Evaluation Reports in a format approved by the Authority are to be completed and submitted quarterly to the Authority on all claims in litigation (claims petition) to include General Claim Information, Claimant Information, Accident Description, Diagnosis/Treatment Plan and Prognosis, Lost Time Status, Litigation Status, Subrogation Potential, Prior Medical History, Action Plan, Reserve Rationale and other key impact items.

TASK C. PROGRAM ADMINISTRATION

1. Must utilize an automated, user-friendly Risk Management Information System (RMIS), acceptable to the Authority, with configurable workflow tools built in that can integrate with the various workflows and processes within the Authority to (i) maintain data on new, run-off and closed claims, to record accident, payment, and reserves information, and to run standard reports (e.g., “New Claims Summary Report”, “9/11 Claims Loss Summary Report”); and (ii) provide reports, including adjuster notes, on-line. A few “special” ad-hoc reports may be requested periodically upon the request of the Authority (e.g., a report tracking all internal audits and external investigations including, but not limited to, pending and closed third-party recoveries, any recovered overpayments, status of ongoing/pending investigations, etc.). Conversion of the claims and financial data from the Authority’s existing system(s) must be completed within 60 calendar days following notification of the acceptance of the RMIS system.

2. Electronic data management system must have the capability to transfer all claims data via electronic “system-to-system” feed to-and-from Authority systems – including all files handled by in-house counsel. Electronic claims files are required to be kept on a current diary system, with profiles for monthly review of all open files.

3. Upon request by the Authority, TPA shall provide secure, electronic reports to allow performance of certain routine data analysis by the Authority (i.e., new claims, closed claims, paid losses, incurred costs, the progress of individual claims and the effectiveness of safety and other cost control programs, financial history and diary notes as compiled in the system). Provide Authority staff with appropriate access and training on the TPA’s CMIS/RMIS system(s) to run this data and generate similar reporting, as needed.

4. All claims files must be created, assigned proper location codes and entered into the TPA’s RMIS system within two (2) working days from the first notice of loss.

5. All payments, reserve revisions and file closings must be entered into the TPA’s RMIS system promptly and accurately. Notify the Authority within three (3) days when a previously closed claim is reopened and document the rationale for reopening the claim.

6. Cooperate fully with all attorneys chosen by the Authority, including the Authority’s Law Department. Assist in the preparation and negotiation of litigated cases and provide litigation status reports on a monthly basis for each litigation file.
7. Monitor all cases for potential subrogation recoveries, prepare correspondence to effect collection, and assist legal counsel where litigation is required to effect recovery.

8. Upon request by the Authority, provide narrative or analytical reports regarding major cases. Provide a written status of specific cases, as selected by the Authority, and meet with Authority representatives to discuss these cases at established intervals.

9. Attend meetings, including but not limited to, disability management, claims review, safety and accident prevention, conferences, court appearances, and scene investigations at the request of the Authority. Meetings may be held at a designated Authority facility, the TPA’s office or other location determined at the time of scheduling.

10. Administer and provide a comprehensive annual statistical summary survey customized to meet the Authority’s needs, and if requested by the Authority, a narrative report to serve as the basis for evaluation of the Authority’s self-insured workers’ compensation program.

11. Assist the Authority, as requested, with cost containment and incentive programs.

12. Provide properly documented policies and procedures (i.e., manual) related to claims administration and processing, including comprehensive management reporting (e.g., pending claims, closed claims, investigated claims, etc.), fraud prevention, internal audits and quality assurance programs.

13. The Authority must pre-approve via email the pursuit of any third-party action subrogation claim.

14. Recommend expert hearing representation for workers' compensation claims, as appropriate. (Note: hearing representation for New Jersey claims will continue to be provided by Authority in-house counsel.)

15. Complete file preparation for all claims, with directions to counsel, at least five (5) days before the scheduled hearings.

16. Keep the Authority abreast of current changes or proposed changes in statutes, rules and regulations and case law affecting the workers’ compensation program.

17. Arrange for delivery and pick-up of all files that are handled by in-house counsel at a minimum of four (4) times per week at a location(s) to be determined by the Authority.

18. Keep schedule of all NJ court appearances and coordinate with Authority’s Law Department.

19. Maintain, monitor and provide necessary notification to all parties regarding the Authority’s Workers’ Compensation lien in third party cases.

20. Prepare for Port Authority defense in claims for medical treatment and disability and ensure we have expert medical reports within 14 days of the filing for a motion for medical and temporary benefits.

21. Coordinate and attend monthly claim meetings with Office of Medical Services, Absence Control, Inspector General and the Workers’ Compensation Claims Manager, also host quarterly claim reviews for the Authority, with participation of the claim adjuster(s) and as needed; Nurse Case Managers and Defense Attorneys.
**TASK D. RECORDS ADMINISTRATION AND RETENTION**

1. Maintain complete and accurate records with respect to costs, expenses, receipts, and other such information required by the Authority that relates to the performance of services under this agreement. Maintain adequate records of services provided in sufficient detail to permit an evaluation of such services. All such records shall be maintained in accordance with generally accepted accounting principles and shall be clearly identified and readily accessible. Provide copies of file correspondence and documentation as requested.

2. The Authority, at its option, shall have the right to perform a claims audit(s). The audit(s) will be directed to, including but not limited to, the following areas: Staffing; Examiner Caseloads; Reporting; Supervision; Case Reserves; File Documentation; Medical Payments; Disability Benefit Delivery; Fines & Penalties; Diary System; Claimant, Employer and Doctor Contact; Case Administration & Investigation; and Contract for Claim Administration Services; and application of current state workers’ compensation rules and regulations and case law.

3. Provide free access to the representatives of the Authority or its designees within 24 hours to such books and records, and give the Authority the right to examine and audit same, to make transcripts therefrom as necessary, and to allow inspection of all work, data, documents, proceedings and activities related to this agreement. Such records, together with supporting documents, shall be kept separate from other documents and records and shall be maintained for a period of no less than three (3) years after receipt of final payment.

4. Maintain closed files for a minimum of three (3) years at the Consultants offices. After the three (3) year period, package as appropriate and deliver closed files (sorted by calendar year) for long-term storage as requested by the Authority to a facility located in the Port District.

**IV. INFORMATION AND MATERIALS PROVIDED BY THE AUTHORITY**

The Authority will make available for the selected TPA’s information certain documents specified below. The documents specified below were not prepared for the purpose of providing information for the TPA upon the present work but they were prepared for other purposes, and do not form a part of this Agreement. The 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 the conclusions to be drawn there from. They are made available to the Consultant merely for the purpose of providing him/her with such information as is in the possession of the Authority, whether or not such information may be accurate, complete or pertinent, or of any value to the Consultant.

Appendix A. Workers’ Compensation Claims Procedures

Appendix B. Claims Reported 2014-2018

Appendix C. Comprehensive Claims History - All Open Claims as of 12/31/2018

Appendix D. 9-11-01 Claims Summary Report

In order to receive this information, Proposers must submit the following:

A. A Letter of Intent to propose on this RFP, signed by a principal of the firm on firm letterhead.
B. A completed Attachment C, Company Profile. PLEASE NOTE: The available document will be emailed in encrypted, password protected file only to the contact provided by the firm pursuant to #10 on Attachment C.

C. A notarized affirmation signed by a principal of the firm that contains the following certification:

1. The information provided will be kept in confidence;
2. The information provided will be used only for the purpose of obtaining pricing information required to submit a proposal; and
3. The information provided will be destroyed in the event of notification that the firm was not awarded this Agreement.

Please send a PDF attachment of the above requested information to Jessica L. Smith at JLSmith@panynj.gov and mail a hard copy with original signatures to the following address:

The Port Authority of NY & NJ  
Attention: Jessica L. Smith  
Procurement Department  
150 Greenwich Street, 21st Floor  
New York, NY 10007

V. LIABILITY INSURANCE AND WORKERS’ COMPENSATION INSURANCE

A. Commercial Liability Insurance:

The Consultant(s), and all of its/their Sub-consultants shall take out, maintain, and pay the premiums on **Commercial General Liability Insurance** for the life of the Agreement and such Insurance and shall be written on an ISO occurrence form CG 00 01 0413 or its equivalent covering the obligations assumed by the Consultant(s) under this Agreement, including, but not limited to, Premises-Operations, Products and Completed Operations, and Independent Contractor’s coverages, with contractual liability language covering the obligations assumed by the Consultant(s) with insurance covering against claims for injuries to persons or damages to property which may arise from or in connection with products and materials supplied to the Agency in limits of not less than **$1,000,000** combined single limit per occurrence and in the annual aggregate. If vehicles are to be used to carry out the performance of this Agreement, then the Consultant(s) shall also take out, maintain and pay the premiums on **Automobile Liability Insurance** covering all owned, non-owned and hired autos in not less than **$1,000,000** combined single limit per accident for bodily injury and property damage.

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

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

In addition, the liability policy(ies) shall be written on a form at least as broad as ISO Form CG 20 10 10 01 (for ongoing operations work) together with ISO Form CG 20 37 10 01 (for completed operations work) or their equivalent and endorses to name “The Port Authority of New York and New Jersey, and its related entities, their Commissioners, Directors, Superintendents, officers, partners, employees, agents, their affiliates, successors or assigns”, in addition to: The City of New York, for all operations at John F. Kennedy and LaGuardia Airports; Port Authority Trans-Hudson Corporation, for operations at PATH; AFCO AvPorts Management LLC, for operations at Teterboro Airport; AFCO AvPorts Management LLC and NY State Dept. of Transportation, for operations at Stewart Int’l Airport, Trends Urban Renewal for operations at PATC and Silverstein Properties Inc.; The Port Authority of New York and New Jersey; Silverstein 2/3/4 WTC Redevelopment LLC; WTC Redevelopment LLC; World Trade Center Properties LLC; 4 World Trade Center LLC; Net Lessees 'Association of the World Trade Center; WTC Management and Development LLC; Silverstein WTC Mgmt. Co. LLC. Silverstein WTC Mgmt. Co II LLC; Silverstein WTC Properties LLC; Silverstein WTC Management and Development LLC; Silverstein WTC LLC.; WTC Investors LLC.; 4 WTC Holdings LLC; WTC Investors Management and Development LLC; World Trade Center Holdco LLC; 4 WTC Mezz LLC. for operations at the World Trade Center Site as “Insured” (as defined in the policy or in an additional insured endorsement amending the policy’s “Who Is An Insured” language as the particular policy may provide) on its liabilities policies with respect to liability arising out of work or operations performed by or on behalf of the Consultant(s) including, but not limited to, materials, parts or equipment furnished in connection with such work or operations. The “Insured” shall be afforded coverage and defense as broad as if they are the first named insured and regardless of whether they are otherwise identified as additional insureds under the liability policies, including but not limited to premises-operations, products-completed operations of the Commercial General Liability Policy. Such additional insureds status shall be provided regardless of privacy of contract between parties. The liability policy(ies) and certificate of insurance shall contain cross-liability language providing severability of
interests so that coverage will respond as if separate policies were in force for each insured. An act or omission of one of the insureds shall not reduce or void coverage to the other insureds. The Consultant(s) is/are responsible for all deductibles or losses not covered by commercially procured insurance. Any portion of the coverage to be provided under a Self-Insured Retention (SIR) of the Consultant(s) is/are subject to the review and approval of the General Manager, Risk Financing. Furthermore, any insurance or self-insurance maintained by the above additional insureds shall not contribute to any loss or claim.

Any self-insured retention shall cover any liability imposed upon the Consultant(s) and any and all subsidiaries with respect to all operations and obligations assumed by the Consultant(s) and any and all subsidiaries. The undersigned represents that such program provides the Additional Insureds (as defined in the Agreement) with all rights, immunities and protections that would be provided by traditional independent insurance required under the Agreement, including, but not limited to, the defense obligations that insurers are required to undertake in liability policies pursuant to the terms of the Agreement.

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

Further, it is the Consultant’s responsibility to maintain, enforce and ensure that the type of coverages and all limits maintained by it and any of all Sub-consultants are accurate, adequate and in compliance with the Port Authority requirement. All certificates of insurance shall be turned over to the Port Authority prior to the start of work, and upon completion of the Agreement.

“The Consultant, its Sub-consultant(s) and its insurer(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.”

B. Workers' Compensation Insurance:

The Consultant(s) and its/their Sub-consultant(s) shall take out, maintain and pay premiums on Workers' Compensation Insurance in accordance with the requirements of law in the state(s) where work will take place, and Employer’s Liability Insurance with limits of not less than $1,000,000 each accident. Such policy shall include a waiver of subrogation endorsement in the benefit of the additional insureds.

C. Professional Liability Insurance:

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

D. Compliance:

Each policy above shall contain an endorsement that the policy may not be canceled, terminated or modified without thirty (30) days’ prior written notice to the Project Manager, at the location where the work will take place with a copy to the Manager, Risk Financing.

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 result in an additional premium, the Manager, Risk Financing for the Port Authority may consider such cost as an out-of-pocket expense.

Within five (5) days after award of this Agreement and prior to the start of work at the site, the Consultant(s) must submit an original certificate of insurance, to the Project Manager and at the location where the work will take place. This certificate of insurance MUST show evidence of the above insurance policy(ies), including, but not limited to, the title of this Agreement, the P. A. Agreement number, the notice of cancellation provisions, prior to the start of work. The Consultant(s) is/are also responsible for maintaining and conforming to all insurance requirements from the additional insureds and their successors and assigns. The Manager, Risk Financing must approve the certificate(s) of insurance before any work can begin. Upon request of the Manager, Risk Financing/Treasury, the Consultant shall furnish to the Authority a certified copy of each policy itself, including the provisions establishing premiums.

Renewal certificates of insurance or policies shall be delivered to the Authority’s Project Manager, and upon request from the additional insureds, their successors or assigns at least fifteen (15) days prior to the expiration date of each expiring policy. The Manager, Risk Financing 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 Consultant(s) shall promptly obtain a new and satisfactory certificate and policy and provide same to the Port Authority.

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

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

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

All insurance coverage shall be provided by the Consultant(s) and/or by or for any of its/their
Sub-consultant(s) at no additional expense to the Port Authority and its related entities. A copy
of this “Insurance” section shall be given to your insurance agent and Sub-consultant(s) and
shall form a part of the covered Agreement for insurance purposes in furtherance of the
insurance requirements of this Agreement.

***
Dear CONTACT:

1. The Port Authority of New York and New Jersey (the "Authority") hereby offers to retain FIRM NAME (the “Consultant” or "you") to provide expert professional brokerage services as more fully set forth in Attachment A, which is attached hereto and made a part hereof, during 2019 through 2023. The Authority reserves the right, at its sole discretion, to extend this Agreement term for three additional one (1)-year periods (2024 through 2026). A letter extending the Agreement term shall be sent to the Consultant at least 30 days prior to the end of the term signed by the Treasurer.

This Agreement shall be signed by you and by the Authority’s Chief Procurement Officer. As used herein and hereafter, the "Director" means the Treasurer of the Authority, or her duly authorized representatives.

For the purpose of administering this Agreement, the Treasurer has designated DAR NAME, TITLE, to act as her duly authorized representative. The Project Manager for this project is NAME, tel. (***) ***-****, or e-mail address: ****@panynj.gov.

2. Time is of the essence. Your services shall be performed as expeditiously as possible and at the time or times required by the Treasurer.

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

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

5. You shall not continue to render services under this Agreement after the point at which the total amount to be paid to you hereunder including reimbursable expenses reaches the amount of $*** unless you are specifically authorized in writing to so continue by the Treasurer. If no such authorization is issued, this Agreement shall be terminated without further obligation by either of the parties as to services not yet performed, but you shall be compensated as hereinafter provided for services already completed. It is understood, however, that this limitation shall not be construed to entitle you to the above amount as a minimum compensation.

As full compensation for all your services and obligations in connection with this Agreement, the Authority will pay you the total of the amounts computed as set forth below, subject to the limits on compensation and the provisions set forth above.

**Fees:** Exhibit I, Pricing and Compensation Proposal, attached hereto, includes a schedule of the actual fees that have been approved by the Authority to perform Services in connection with this Agreement.

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

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

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

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

2) If the Consultant uses an outside vendor for the reproduction of such documents, the actual, necessary and reasonable amounts for the reproduction of such documents.
The Authority will not pay for expenses that are usually and customarily included as part of the Consultant's overhead. For the purposes of this Agreement out-of-pocket expenses do not include amounts for typing, utilization of computer systems, computer aided design and drafting (CADD), cameras, recording or measuring devices, flashlights and other small, portable equipment, safety supplies, phones, telephone calls, electronic messaging including facsimile, or expendable office supplies. Unless otherwise indicated, required insurance is not a reimbursable expense.

When the Consultant uses its personal vehicle to provide services within the Port District, the Consultant will be reimbursed for travel expenses beyond normal commuting costs at a rate not higher than the Annual Federal Mileage Reimbursement Rate (as determined by the United States General Services Administration (GSA) – [http://www.gsa.gov/portal/content/100715](http://www.gsa.gov/portal/content/100715)) per mile traveled by auto.

When the Consultant is asked to provide services outside the Port District, the actual cost of transportation as well as the cost for hotel accommodations and meals will be reimbursable hereunder when approved in advanced in writing by the Treasurer. The cost for all meals and lodging on approved overnight trips is limited to the amounts established by the United States GSA for that locality.

GSA Domestic Rates: [http://www.gsa.gov/portal/category/21287](http://www.gsa.gov/portal/category/21287)

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

B. As used herein:

"Port District" is a geographical area of about 1,500 square miles in the States of New York and New Jersey, centering about New York Harbor. The Port District includes the Cities of New York and Yonkers in New York State, 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.

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

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

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

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

10. No certificate, payment (final or otherwise), acceptance of any work nor any other act or omission of the Authority or the Treasurer shall operate to release you from any obligations under or upon this Agreement, or to estop the Authority from showing at any time that such certificate, payment, acceptance, act or omission was incorrect or to preclude the Authority from recovering any money paid in excess of that lawfully due, whether under mistake of law or fact or to prevent the recovery of any damages sustained by the Authority.

11. Originals of estimates, reports, records, data, charts, documents, renderings, computations, computer tapes or disks, and other papers of any type whatsoever, whether in the form of writing, figures or delineations, which are prepared or compiled in connection with this Agreement, shall become the property of the Authority, and the Authority will have the right to use or permit the use of them and of any ideas or methods represented by them for any purpose and at any time without compensation other than that specifically provided herein. The Consultant hereby warrants and represents that the Authority will have at all times the ownership and rights provided for in the immediately preceding sentence free and clear of all claims of third persons, whether such claims presently exist or arise in the future and whether presently known to either of the parties to this Agreement or not. This Agreement shall not be construed, however, to require the Consultant to obtain for the Consultant and the Authority the right to use any idea, design, method, material, equipment or other matter which is the subject of a valid patent, unless owned by the Consultant,
by a subconsultant, or by an employee of either. Whether or not your Proposal is accepted by the Authority, it is agreed that all information of any nature whatsoever which is in any way connected with the services performed in connection with this Agreement, regardless of the form in which it has been or may be given by you or on your behalf, whether prior or subsequent to the execution of this Agreement, to the Authority, its Commissioners, officers, agents or employees, is not given in confidence and may be used or disclosed by or on behalf of the Authority without liability of any kind, except as may arise under valid existing or pending patents, if any.

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

13. Notwithstanding anything to the contrary herein, the work product of the Consultant, its officers, agents, employees, or sub-consultants which is produced in accordance with the Agreement, whether it consists of computer programming or documentation thereof, including source code, and on any media whatsoever, shall be deemed to belong exclusively to the Authority, and the Authority will have the exclusive right to obtain and to hold in its own name any and all copyrights, patents, trade secrets and/or other proprietary rights and protection as may be produced as part of this work product, including the right to extensions or renewals, where appropriate. The work product shall not be destroyed or released to anyone outside of the Authority without express written authorization of the Treasurer. The Authority will have the exclusive right to use or permit the use of them and of any ideas or methods represented by them for any purpose and at any time without compensation other than that specifically provided for herein. You agree to contract with your employees for the benefit of the Authority to ensure that the Authority has such rights and to give to the Authority or any party designated by the Authority all assistance reasonably required to perfect the rights herein above stated. You shall indemnify and hold harmless the Authority against any claims of proprietary rights infringement arising out of such use of your work product.

14. You shall promptly and fully inform the Treasurer in writing of any patents or patent disputes, or intellectual property disputes, whether existing or potential, of which you have knowledge, relating to any idea, design, method, material, equipment or other matter related to the subject matter of this Agreement or coming to your attention in connection with this Agreement.
15. This Agreement being based upon your special qualifications for the services herein contemplated, any assignment, subletting or other transfer of this Agreement or any part hereof or of any moneys due or to become due hereunder without the express consent in writing of the Authority shall be void and of no effect as to the Authority, provided, however, that you may sublet services to subconsultants with the express consent in writing of the Treasurer. All persons to whom you sublet services, however, shall be deemed to be your agents and no subletting or approval thereof shall be deemed to release you from your obligations under this Agreement, to impose any obligation on the Authority to such subconsultant or give the subconsultant any rights against the Authority.

16. The Authority has a long standing practice of encouraging Minority Business Enterprises (MBEs) and Women-owned Business Enterprises (WBEs) to seek business opportunities with it, either directly or as subconsultants or subcontractors. "Minority business enterprise" or "MBE" means a business entity which is at least fifty-one percent (51%) owned by one (1) or more members of one (1) or more minority groups, or, in the case of a publicly held corporation, at least fifty-one percent (51%) of the stock of which is owned by one (1) or more members of one (1) or more minority groups; and whose management and daily business operations are controlled by one (1) or more such individuals who are citizens or permanent resident aliens. "Women-owned business enterprise" or "WBE" means a business which is at least fifty-one percent (51%) owned by one (1) or more women; or, in the case of a publicly held corporation, fifty-one percent (51%) of the stock of which is owned by one (1) or more women: and whose management and daily business operations are controlled by one (1) or more women who are citizens or permanent resident aliens.

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

A. Black persons having origins in any of the Black African racial groups not of Hispanic origin;
B. Hispanic persons of Puerto Rican, Mexican, Dominican, Cuban, Central or South American culture or origin, regardless of race;
C. Asian and Pacific Islander persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent or the Pacific Islands;
D. American Indian or Alaskan Native persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification.

The Authority has set a goal of twenty percent (20%) participation for qualified and Authority certified MBEs and ten percent (10%) for qualified and Authority certified WBEs on technical service projects.

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

In order to facilitate the meeting of this goal, the Consultant shall use every good-faith effort to utilize subconsultants who are Authority certified MBEs or WBEs to the maximum extent feasible.
Good faith efforts to include and facilitate participation by MBE/WBEs shall include, but not be limited to the following:

A. Dividing the services and materials to be procured into smaller portions, where feasible.

B. Giving reasonable advance notice of specific contracting, subcontracting and purchasing opportunities to such MBE/WBEs as may be appropriate.

C. Soliciting services and materials from Authority certified MBE/WBE firms. To access the Authority’s Directory of MBE/WBE certified firms, go to http://www.panynj.gov/business-opportunities/sd-mwsdbe-profile.html.

D. Ensuring that provision is made to provide progress payments to MBE/WBEs in accordance with prompt payment provisions of the Agreement under which services are being provided, if applicable.

E. Observance of reasonable commercial standards of fair dealing in the respective trade or business.

The Authority has a list of certified MBE/WBE service firms which is available to you at http://www.panynj.gov/business-opportunities/supplier-diversity.html. The Consultant will be required to submit to the Authority's OBDCR for certification the names of MBE/WBE firms it proposes to use who are not on the list of certified MBE/WBE firms.

The Consultant shall include their MBE/WBE Participation Plans (Form PA 3760D) with their task order proposals, to be reviewed and approved by the Authority’s OBDCR.

The Consultant must submit an MBE/WBE Participation Plan for each MBE/WBE subconsultant. Each Participation Plan shall contain, at a minimum, the following:

- Identification of the MBE/WBE: Provide the name and address of the MBE/WBE. If no MBE/WBEs are identified, describe the process for selecting participant firms in order to achieve the good-faith goals under this Agreement.

- Level of Participation: Indicate the dollar value and percentage of MBE/WBE participation expected to be achieved.

- Scope of Work: Describe the specific scope of work the MBE/WBEs will perform.

The MBE/WBE subconsultant listed on each of the MBE/WBE Participation Plans must be certified by the Authority in order for the Consultant to receive credit toward the MBE/WBE goals set forth in this Agreement. Please go to http://www.panynj.gov/business-opportunities/sd-mwsdbe-profile.html to search for MBE/WBEs by a particular commodity or service. The Authority makes no representation as to the financial responsibility of these firms or their ability to perform work under this Agreement.

Subsequent to Agreement award, all changes to any of the MBE/WBE Participation Plans must be submitted via a Modified MBE/WBE Participation Plan to the Project Manager for review and approval by OBDCR. For submittal of modifications to the MBE/WBE Plan, Consultants are directed to use Form PA3760D. The Consultant shall not make changes to any of its approved MBE/WBE Participation Plans or substitute MBE/WBE subconsultants or suppliers for those
named in their approved plans without the Manager’s prior written approval. Unauthorized changes or substitutions, including performing the work designated for a subconsultant with the Consultant’s own forces, shall be a violation of this section. Progress toward attainment of MBE/WBE participation goals set forth herein will be monitored throughout the duration of the Agreement.

The Consultant shall also submit to the Project Manager, along with invoices, the Statement of Subcontractor Payments, which may be downloaded at [http://www.panynj.gov/business-opportunities/become-vendor.html](http://www.panynj.gov/business-opportunities/become-vendor.html). The Statement must include the name and business address of each MBE/WBE subconsultant and supplier actually involved in the Agreement, a description of the work performed and/or product or service supplied by each such subcontractor/subconsultant or supplier, the date and amount of each expenditure, and such other information that may assist the Project Manager in determining the Consultant’s compliance with the foregoing provisions.

**MBE/WBE Conditions of Participation**

MBE/WBE participation will be counted toward meeting the MBE/WBE agreement goal, subject to all of the following conditions:

1. **Commercially Useful Function:** An MBE/WBE is considered to perform a commercially useful function when it is responsible for the execution of a distinct element of work on a contract and carries out its responsibilities by actually performing, managing, and supervising the work involved in accordance with normal industry practice. Regardless of whether an arrangement between the Consultant and the MBE/WBE represent standard industry practice, if the arrangement erodes the ownership, control or independence of the MBE/WBE or in any other way does not meet the commercially useful function requirement, that firm shall not be included in determining whether the MBE/WBE goal is met and shall not be included in MBE/WBE reports. If this occurs with respect to a firm identified as an MBE/WBE, the Consultant shall receive no credit toward the MBE/WBE goal and may be required to backfill the participation. An MBE/WBE does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction or contract through which funds are passed in order to obtain the appearance of MBE/WBE participation. An MBE/WBE may rebut a determination by the Authority that the MBE/WBE is not performing a commercially useful function to the Authority.

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

3. **Supervision:** All work performed by the MBE/WBE must be controlled and supervised by the MBE/WBE without duplication of supervisory personnel from the Consultant, other subconsultants on the Agreement, or their affiliates. This does not preclude routine communication between the supervisory personnel of the MBE/WBE and other supervisors necessary to coordinate the work.
Counting MBE/WBE Participation

The value of the work performed by an MBE/WBE, with its own equipment, with its own forces, and under its own supervision will be counted toward the goal, provided the utilization is a commercially useful function. An MBE/WBE prime contractor/consultant shall still provide opportunities for participation by other MBE/WBEs. Work performed by MBE/WBEs will be counted as set forth below. If the Authority determines that some or all of the MBE/WBEs work does not constitute a commercially useful function, only the portion of the work considered to be a commercially useful function will be credited toward the goal.

1. Subconsultants: One hundred percent (100%) of the value of the work to be performed by an MBE/WBE subconsultant will be counted toward the MBE/WBE goal. The value of such work includes the cost of materials and supplies purchased by the MBE/WBE, except the cost of supplies or equipment leased from the Consultant, other subconsultants or their affiliates will not be counted. When an MBE/WBE subcontracts part of the work of its contract to another firm, the value of the subconsultant work may be counted toward MBE/WBE goals only if the MBE/WBE subconsultant is itself an MBE/WBE. Work that an MBE/WBE subconsultants to a non-MBE/WBE firm does not count toward MBE/WBE goals.

2. Material Suppliers: Sixty percent (60%) of the expenditure to an MBE/WBE material supplier will be counted toward the MBE/WBE goal. Packagers, brokers, manufacturer’s representatives, or other persons who arrange or expedite transactions are not material suppliers within the meaning of this paragraph.

3. Broker’s/Manufacturer’s Representatives: One hundred percent (100%) of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees for transportation charges for the delivery of materials or supplies provided by an MBE/WBE broker/manufacturer’s representative will be counted toward the MBE/WBE goal, provided they are determined by the Authority to be reasonable and not excessive as compared with fees customarily allowed for similar services. The cost of the materials and supplies themselves will not be counted.

4. Services: One hundred percent (100%) of fees or commissions charged by an MBE/WBE for providing a bona fide service, such as professional, technical, consultant, or managerial services, or for providing bonds or insurance specifically required for the performance of the work will be counted toward the MBE/WBE goal, provided the fee is reasonable and not excessive as compared with fees customarily allowed for similar services.

5. Joint Venture: Joint ventures between MBE/WBEs and non-MBE/WBEs may be counted toward the MBE/WBE goal in proportion to the total dollar value of the Agreement equal to the distinct, clearly defined portion of the work of the contract that the MBE/WBE performs with its own forces. Contact OBDCR at (201) 395-3958 for more information about requirements for such joint ventures.
17. NON-DISCRIMINATION REQUIREMENTS

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

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

   B. Consultant agrees that these “Non-Discrimination Requirements” are a binding part of this Agreement. Without limiting the generality of any other term or provision of this Agreement, in the event the Authority, or a state or federal agency finds that the Consultant or any of its subconsultants or vendors has not complied with these “Non-Discrimination Requirements”, the Authority may cancel, terminate or suspend this Agreement in accordance with Section 10 of this Agreement.

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

18. NOTIFICATION OF SECURITY REQUIREMENTS

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

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

- Execution of Non-Disclosure and Confidentiality Agreements and Acknowledgments

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

- Consultant/Subconsultant identity checks and background screening
The Authority’s designated background screening provider may require inspection of not less than two forms of valid/current government issued identification (at least one having an official photograph) to verify staff’s name and residence; screening of 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.

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

In accordance with the Authority’s Information Security Handbook, background screening is required when a person has an established need to know or has access to any one of the following types of information or physical locations:

1) Confidential Privileged Information
2) Confidential Information related to a security project and/or task
3) Secure Area of an Authority or PATH facility
4) Mission critical system

The Consultant shall perform background checks through the Authority’s personnel assurance program provider. The Secure Worker Access Consortium (S.W.A.C.) is the only Authority approved provider to be used to conduct background screening and personal identity verification, except as otherwise required by federal law and/or regulation (such as Security Identification Display Area (S.I.D.A), the federal regulatory requirements for personnel performing work at aviation facilities). Information about S.W.A.C., instructions, corporate enrollment, online applications, and location of processing centers can be found at [http://www.secureworker.com](http://www.secureworker.com), or S.W.A.C. may be contacted directly at (877) 522-7922 for more information and the latest pricing. The cost for said background checks for staff that pass and are granted a credential may be reimbursable to the Consultant (and its subconsultants) as an out-of-pocket expense as provided herein. Costs for background checks for staff that are rejected for a credential for any reason are not reimbursable.

- Issuance of Photo Identification Credential

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

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

Where applicable, for sensitive security construction sites or facilities, successful completion of the application, screening and identity verification for all employees of the Consultant and subconsultant shall be completed prior to being provided a Photo Identification credential by the personnel assurance program provider.

If any questions should arise as to when a Personnel Assurance Program background check is required, the Authority Manager or contract administrator should be contacted for assistance.

- **Designated Secure Areas**

  Services under the Agreement may be required in designated secure areas, as the same may be designated by the Authority ("Secure Areas"). The Authority will 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. All personnel that require access to designated Secure Areas who are not under escort by an authorized individual will be required to undergo background screening and personal identity verification.

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

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

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

  This Agreement may require access to Authority information considered Protected Information (“PI”) as defined in the Port Authority Information Security Handbook (“Handbook”), dated October 15, 2008, revised as of April 2, 2018, 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 Consultant 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 Authority or when released by the Authority to outside entities. The Handbook can be obtained at: [http://www.panynj.gov/business-opportunities/pdf/Corporate-Information-Security-Handbook.pdf](http://www.panynj.gov/business-opportunities/pdf/Corporate-Information-Security-Handbook.pdf).

- **Audits for Compliance with Security Requirements**

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

19. **CONFIDENTIAL INFORMATION/NON-PUBLICATION**

   A. As used herein, confidential information shall mean all information disclosed to the Consultant or the personnel provided by the Consultant hereunder which relates to the Authority's and/or the Port Authority Trans Hudson (PATH) Corporation’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 Consultant’s services under this Agreement.

   B. Protected Information shall mean and include collectively, as per *The Port Authority of New York & New Jersey Information Security Handbook (dated October 15, 2008, revised as of April 2, 2018, and as may be further amended)*, Confidential Information, Confidential Proprietary Information, Confidential Privileged Information and information that is labeled, marked or otherwise identified by or on behalf of the Authority so as to reasonably connote that such information is confidential, privileged, sensitive or proprietary in nature. Confidential Information
shall also include all work product that contains or is derived from any of the foregoing, whether
in whole or in part, regardless of whether prepared by the Authority or a third-party or when the
Authority receives such information from others and agrees to treat such information as
Confidential.

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

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

20. The Consultant assumes the following distinct and several risks to the extent they may arise
from the negligent or willful intentional acts or omissions of the Consultant or its
subconsultants/subcontractors in the performance of services hereunder:

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

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

C. The risk of claims, arising out of or in connection with the performance of services
hereunder, whether made against the Consultant or its subconsultants/subcontractors or against the
Authority, for loss or damage to any property of the Consultant’s agents, employees,
subcontractors, subconsultants, materialmen or others performing services hereunder;
D. The risk of claims, just or unjust, by third persons made against the Consultant or its subconsultants/subcontractors or the Authority on account of injuries (including wrongful death), loss or damage of any kind whatsoever arising in connection with the performance of services hereunder, including claims against the Consultant or its subconsultants/subcontractors or against the Authority for the payment of workers’ compensation, whether such claims are made and whether such injuries, damage or loss are sustained at any time both before and after the completion of services hereunder.

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

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

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

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

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

21. The Port Authority has adopted a Code of Ethics for Port Authority Vendors (the “Code”). The Code is hereby made a part of this Agreement. The Code can be found at https://www.panynj.gov/business-opportunities/become-vendor.html.
22. CERTIFICATION OF NO INVESTIGATION (CRIMINAL OR CIVIL ANTI-TRUST),
INDICTMENT, CONVICTION, DEBARMENT, SUSPENSION, DISQUALIFICATION
AND DISCLOSURE OF OTHER INFORMATION

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

A. been indicted or convicted in any jurisdiction;

B. been suspended, debarred, found not responsible or otherwise disqualified from entering
into any agreement with any governmental agency or been denied a government contract for failure
to meet standards related to the integrity of the Consultant;

C. received a less than satisfactory rating on a public or government contract;

D. had an agreement terminated by any governmental agency for breach of contract or for any
cause based in whole or in part on an indictment or conviction;

E. ever used a name, trade name or abbreviated name, or an Employer Identification Number
different from those inserted in the Proposal;

F. had any business or professional license suspended or revoked or, within the five years
prior to proposal opening, had any sanction imposed in excess of 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;

G. had any sanction imposed as a result of a judicial or administrative proceeding related to
fraud, extortion, bribery, bid rigging, proposal rigging, embezzlement, misrepresentation or anti-
trust, regardless of the dollar amount of the sanctions or the date of their imposition; and

H. been, and is not currently, the subject of a criminal investigation by any federal, state or
local prosecuting or investigative agency and/or a civil anti-trust investigation by any federal, state
or local prosecuting or investigative agency, including an inspector general of a governmental
agency or public authority.

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

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

A. the prices in its proposal have been arrived at independently without collusion,
consultation, communication or agreement for the purpose of restricting competition, as to any
matter relating to such prices with any other consultant or with any competitor;
B. the prices quoted in its proposal have not been and will not be knowingly disclosed directly or indirectly by the Consultant prior to the official opening of such proposal to any other consultant or to any competitor;

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

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

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

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

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

The certifications in this Section and the Section entitled “Certification of No Investigation (Criminal or Civil Anti-trust), Indictment, Conviction, Debarment Suspension, Disqualification and Disclosure of Other Information” shall be deemed to be made by the Consultant as follows:

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

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

Moreover, the certifications in this Section and the Section entitled “Certification of No Investigation (Criminal or Civil Anti-trust), Indictment, Conviction, Debarment Suspension, Disqualification and Disclosure of Other Information”, if made by a corporate Consultant, shall be
deemed to have been authorized by the Board of Directors of the Consultant, and such authorization shall be deemed to include the signing and submission of the proposal and the inclusion therein of such certification as the act and deed of the corporation.

In any case where the Consultant cannot make the certifications in this Section and the Section entitled “Certification of No Investigation (Criminal or Civil Anti-trust), Indictment, Conviction, Debarment Suspension, Disqualification and Disclosure of Other Information”, the Consultant shall so state and shall furnish with the signed proposal a signed statement which sets forth in detail the reasons therefor. If the Consultant is uncertain as to whether it can make the foregoing certifications, it shall so indicate in a signed statement furnished with its proposal, setting forth in such statement the reasons for its uncertainty. With respect to the foregoing certification in paragraph "25G.", if the Consultant cannot make the certification, it shall provide, in writing, with the signed proposal: (i) a list of the name(s), address(es), telephone number(s), and place(s) of principal employment of each such individual or organization; and (ii) a statement as to whether such individual or organization has a “financial interest” in this Agreement, as described in the Procurement Disclosure Policy of the Authority (a copy of which is available upon request to the Chief Procurement Officer of the Authority). Such disclosure is to be updated, as necessary. As a result of such disclosure, the Authority will 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 Consultant may be able to make the certifications in this Section and the Section entitled “Certification of No Investigation (Criminal or Civil Anti-trust), Indictment, Conviction, Debarment Suspension, Disqualification and Disclosure of Other Information” at the time the proposal is submitted, the Consultant shall immediately notify the Authority in writing during the period of irrevocability of proposals and the term of the Agreement or any extension of such period, if Consultant is awarded the Agreement, 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 Consultant with full knowledge that they would become a part of the records of the Authority and that the Authority will rely on their truth and accuracy in awarding this Agreement. In the event that the Authority should determine at any time prior or subsequent to the award of this Agreement that the Consultant has falsely certified as to any material item in the foregoing certifications, has failed to immediately notify the Authority of any change in circumstances which might make it unable to make the foregoing certifications, might render any portion of the certifications previously made invalid, or require disclosure, or has willfully or fraudulently furnished a signed statement which is false in any material respect, or has not fully and accurately represented any circumstance with respect to any item in the foregoing certifications required to be disclosed, the Authority may determine that the Consultant is not a responsible Consultant with respect to its proposal on the Agreement or with respect to future proposals on Authority agreements and may exercise such other remedies as are provided to it by the Agreement with respect to these matters. In addition, Consultant is advised that knowingly providing a false certification or statement pursuant hereto may be the basis for
prosecution for offering a false instrument for filing (see, e.g., New York Penal Law, Section 175.30 et seq.). Consultants are also advised that the inability to make such certification will not in and of itself disqualify the Consultant and that in each instance the Authority will evaluate the reasons therefor provided by the Consultant.

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

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

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

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

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

25. CONSULTANT RESPONSIBILITY, SUSPENSION OF WORK AND TERMINATION

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

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

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

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

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

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

The Consultant shall ensure that no gratuities of any kind or nature whatsoever shall be solicited or accepted by it or by its personnel for any reason whatsoever from the passengers, tenants, customers or other persons using the Facility and shall so instruct its personnel. The Consultant shall include the provisions of this clause in each subcontract entered into under this Agreement.

27. OBLIGATION TO REPORT

In the event that the Consultant becomes aware of the occurrence of any conduct that is prohibited by the section entitled “No Gifts, Gratuities, Offers of Employment, Etc.,” or if the Consultant knows or should reasonably know that a principal, employee, or agent of the Consultant or of its subconsultants or subcontractors has committed a violation of federal, New York or New Jersey law addressing or governing anti-trust, public contracting, false claims, fraud, extortion, bribery, bid rigging, embezzlement, prevailing wage or minority, woman, small or disadvantaged business enterprises, it shall report such information to the Authority’s Office of Inspector General within three (3) business days of obtaining such knowledge. (See “http://www.panynj.gov/inspector-general” for information about how to report information to the Office of Inspector General).
Failing to report such conduct may be grounds for finding of non-responsibility. The Consultant shall not take any Retaliatory Action against any of its employees for reporting such conduct.

In addition, during the term of this Agreement, the Consultant shall not make an offer of employment or use confidential information in a manner proscribed by the Code of Ethics and Financial Disclosure dated March 11, 2014, or as may be revised, (a copy of which is available upon request to the Office of the Secretary of the Authority).

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

28. CONFLICT OF INTEREST

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

29. INTEGRITY MONITOR

In the event that the Authority hires an Integrity Monitor in connection with the work under this Agreement, the Consultant and any subcontractors/subconsultants shall cooperate fully with the Monitor and the Authority, which includes, but is not limited to, providing complete access to all personnel and records in any way related to the work performed pursuant to this Agreement. Any failure to cooperate may result in the termination of this Agreement. The Consultant shall include the provisions of this clause in each subcontract entered into under this Agreement.

30. RIGHT TO AUDIT

Notwithstanding anything to the contrary, the Authority, including its Inspector General, Audit Department and Integrity Monitor, or its designee(s) each shall have the right to audit all of the records of the Consultant with respect to the work and the Agreement, including, without limitation, records pertaining to any compensation paid, payable, or to be paid under the Agreement. The Consultant shall not be entitled to any reimbursement or other compensation for costs associated with such audit, investigation, or certification. The Consultant shall include the provisions of this clause in each subcontract entered into under this Agreement.

The Consultant agrees to pay for the cost of any audit or investigation conducted by the Authority, in which any criminal activity, ethics violations, or professional misconduct by the Consultant or any of its employees, or subcontractors/subconsultants or any of its employees, are discovered. The Consultant shall further agree that should it fail or refuse to pay for any such audit or investigation, the Authority is authorized to deduct from any sum owing the Consultant an amount equal to the cost of such audit and the damages resulting therefrom. The determination of the value of any such costs and decision to withhold any such payments are at the sole discretion of the Authority (including its Inspector General).

31. DEFINITIONS

As used in sections 24 to 30 above, the following terms shall mean:

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

**Agency or Governmental Agency** - Any federal, state, city or other local agency, including departments, offices, public authorities and corporations, boards of education and higher
education, public development corporations, local development corporations, the Port Authority of New York and New Jersey and its wholly owned subsidiaries and others.

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

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

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

**Retaliatory Action** - Any adverse action taken by, or at the direction of, the Consultant, against any of its employees for reporting any information as set forth in the clause entitled “Obligation to Report,” above.

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

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

34. References herein to the Authority shall and shall be deemed to mean equally the Port Authority Trans Hudson Corporation (PATH).

35. Nothing in this Agreement is intended to constitute the creation of an agency relationship between the Authority and the Consultant or any other right for the Consultant to act as the representative of the Authority for any purpose whatsoever except as may be specifically provided in this Agreement. It is hereby specifically acknowledged and understood that the Consultant, in performing its services hereunder, is and shall be at all times an independent contractor and the officers, agents and employees of the Consultant shall not be or be deemed to be agents, servants, or employees or "special employees" of the Authority.
36. If the foregoing meets with your approval, please indicate your acceptance by signing the original and the additional enclosed copy in the lower left-hand corner and returning them to the Authority.

Sincerely,

THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY

Lillian D. Valenti  
Chief Procurement Officer  
Procurement Department  

Date ___________________  

ACCEPTED:  

FIRM NAME  

By: _____________________________  

Print Name: _____________________  

Title: ___________________________  

Date: ___________________________
INSTRUCTIONS

If the selected Consultant firm is not located in the States of New York or New Jersey, change the number of the last Paragraph of this Agreement from "36" to "37" and insert a new Paragraph "36" as follows:

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

REQUEST FOR PROPOSALS FOR THE PERFORMANCE OF PROFESSIONAL CLAIMS ADMINISTRATION SERVICES FOR THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY SELF-INSURED WORKERS' COMPENSATION PROGRAM DURING 2019 THROUGH 2022 (RFP#58035)

AGREEMENT ON TERMS OF DISCUSSION

The Port Authority’s receipt or discussion of any information (including information contained in any proposal, vendor qualification(s), 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.

Any information (including information contained in any proposal, vendor qualification(s), ideas, models, drawings, or other material communicated or exhibited by us or on our behalf) provided in connection with this procurement is subject to the provisions of the Port Authority Public Records Access Policy adopted by the Port Authority’s Board of Commissioners, which may be found on the Port Authority website at: http://corpinfo.panynj.gov/documents/Access-to-Port-Authority-Public-Records/. The foregoing applies to any information, whether or not given at the invitation of the Authority.

____________________________________
(Company)

____________________________________
(Signature)

____________________________________
(Title)

____________________________________
(Date)

ORIGINAL AND PHOTOCOPIES OF THIS PAGE ONLY. DO NOT RETYPE.
1. Company Legal Name (print or type):
_____________________________________________________________________________

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

3. Business Telephone Number: ________________________________________________

4. Business Fax Number: ______________________________________________________

5. Firm website: _______________________________________________________________

6. Federal Employer Identification Number (EIN): _________________________________

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

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

9. Officer or Principal of Firm and Title:
_____________________________________________________________________________

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

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

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

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

**COST PROPOSAL FORM**

PERFORMANCE OF PROFESSIONAL CLAIMS ADMINISTRATION SERVICES FOR THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY SELF-INSURED WORKERS’ COMPENSATION PROGRAM DURING 2019 - 2022 (RFP#58035)

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