

THE PORT AUTHORITY OF NY & NJ

**PROCUREMENT DEPARTMENT
4 WORLD TRADE CENTER (4 WTC)
150 GREENWICH STREET, 21ST FLOOR
NEW YORK, NY 10007**

July 2, 2015

ADDENDUM #10

**TO PROSPECTIVE BIDDER(S) ON BID #42356 - DESIGN, FABRICATE, DELIVER
AND INSTALL IN-GROUND LIFTS AT THE HARRISON CAR MAINTENANCE
FACILITY**

Bid Due Date: July 7, 2015 at 11:00AM

I. BIDDER'S QUESTIONS AND ANSWERS

The following information is made available in response to questions submitted by prospective Bidder(s). It should not be deemed to answer all questions that have been submitted by Bidder(s) to the Port Authority. It addresses only those questions which the Port Authority has deemed to require additional information and/or clarification. The fact that information has not been supplied with respect to a question asked by a Bidder(s) does not mean or imply, nor should it be deemed to mean or imply, any meaning, construction, or implication with respect to the terms of the Bid Solicitation Document.

The Port Authority makes no representations, warranties or guarantees that the information contained herein is accurate, complete or timely or that such information accurately represents the conditions that would be encountered during the performance of the Agreement. The furnishing of such information by the Port Authority shall not create or be deemed to create any obligation or liability upon it for any reason whatsoever and each Bidder, by submitting its proposal, expressly agrees that it has not relied upon the foregoing information, and that it shall not hold the Port Authority liable or responsible therefor in any manner whatsoever. Accordingly, nothing contained herein and no representation, statement or promise, of the Port Authority, its directors, officers, agents, representatives or employees, oral or in writing, shall impair or limit the effect of the warranties of the Bidder(s) required by this Proposal or Agreement and the Bidder(s) agrees that it shall not hold the Port Authority liable or responsible therefor in any manner whatsoever.

Question #40	I am going through all the documents and forms for this bid and need to know exactly what is required from our subcontractors <u>at the time of bid</u> . Please confirm whether or not we need to submit the following for our subs:
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	<ul style="list-style-type: none"> • Background Qualifications Questionnaire (BQQ) – Part II-6: It states that this form should be submitted for all Subcontractors and Suppliers identified at the time of bid and whose Subcontracts will meet the dollar thresholds requiring the certifications. I have not been able to find the dollar thresholds. • Certification Regarding Lobbying (if over \$100K) • Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion (Equal or greater than \$25K)
Answer #40	<p>For the BQQ, the dollar threshold is \$100,000.</p> <p>For the certifications, these should be submitted with the bid for any subs identified at the time of bid.</p>
Question #41	<p>We refer you to specification page III-23. There is reference to Appendix A4 (Pre-award DBE Trucking Commitment Form) and Appendix A5 (DBE Regular Dealer Verification Form) which are to be submitted with the Proposal. We do not find these in the bid documents. Please provide these to the Bidders so we can see the information required so we can obtain this from the Companies we may decide to utilize on this Project.</p>
Answer #41	<p>Please use the attached forms.</p>

This communication shall be initialed by you and annexed to your response to the above-referenced Bid upon submission.

In case any Respondent fails to conform to these instructions, its submission will nevertheless be construed as though this communication had been so physically annexed and initialed.

QUESTIONS CONCERNING THIS ADDENDUM MAY BE ADDRESSED TO CORY MERMER, WHO CAN BE REACHED AT (212) 435-5696 or at cmermer@panynj.gov.

THE PORT AUTHORITY OF NY & NJ

RICHARD PEREZ
 PROCUREMENT MANAGER
 FTA/WTC SITE PROJECTS

RESPONDENT'S FIRM NAME: _____

INITIALED: _____

DATE: _____

DBE REGULAR DEALER VERIFICATION FORM

PA 3750A/ 01-15

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

Project Number:	Telephone # of Prime
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Prime Contractor: _____

DBE Firm: _____

Provide a brief description of the material(s) your firm will be supplying and the Prime is requesting be credited as a regular dealer (including item numbers and estimated quantities when possible).

If either question is marked 'No', then the Prime cannot receive regular dealer credit for the services provided by the DBE firm. Instead, the maximum credit that could be received would be the fee or commission the DBE firm receives for its services. Before executing this form, read the attached 'Guide for Counting DBE Suppliers' which includes the official question and answer issued by the United States Department of Transportation.

	Yes	No
1. Does your firm "regularly" engage in the purchase and sale or lease, to the general public in the usual course of its business, of product(s) of the general character which will be involved in this contract and for which DBE credit is being sought?	<input type="radio"/>	<input type="radio"/>
2. Is the role your firm will play on this specific contract consistent with the regular sale or lease of the product(s) in question, as distinct from a role better understood as that of a broker, packager, manufacturer's representative, or other person who arranges or expedites a transaction?	<input type="radio"/>	<input type="radio"/>

Authorized Representative of DBE Firm

The undersigned individual hereby verifies that he/she is authorized to make this verification on behalf of the DBE firm, that the DBE firm "regularly" engages in the purchase and sale or lease of the items listed herein and is not otherwise a packager, broker, manufacturer's representative, or other person who arranges or expedites transactions, that the answers and information provided herein are true and correct to the best of her/his knowledge, information and belief and any false statement made in this verification may be the basis for prosecution for offering a false instrument for filing (see e.g., New York Penal Law, Section 175.30 et. Seq.).

Signature of Principal or Officer

Date

Print Name and Title

Phone Number

Authorized Representative of Prime Contractor

The undersigned individual hereby verifies that he/she is authorized to make this verification on behalf of the prime contractor, that, to the best of his/her knowledge, information and belief the DBE firm 'regularly' engages in the purchase and sale or lease of the items listed herein and is not otherwise a packager, broker, manufacturers' representative, or other person who arranges or expedites transactions.

I, Signature of Principal or Officer _____ Date _____

_____ an officer of _____
Print Name and Title Company

certify that I have read the DBE Regular Dealer Verification Form and the information contained in it is true. I fully understand that any false statement within this submittal may prevent the company and/or the undersigned from being found to be responsible bidders/proposers in connection with future agreements. In addition, any false statement within this submittal may subject the company and/or the undersigned to criminal charges in the state and federal courts of New York and New Jersey.

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

ACKNOWLEDGMENT BY NOTARY PUBLIC
DBE REGULAR DEALER VERIFICATION FORM (reverse)

ACKNOWLEDGEMENT

of

STATE OF _____)

S.S.:

COUNTY OF _____)

On this _____ day of _____, before me personally came and appeared _____ to be known, who being by me duly sworn, did depose and say that he/she resides at _____, that he/she is the _____ of _____ company, that the seal affixed to said Certification is such corporate seal, that it was so affixed by order of the directors of said corporation, and that he/she signed his/her name thereto by like order.

(Notary's Seal or Stamp)

Notary Public
My commission expires:

GUIDE FOR COUNTING DBE SUPPLIERS

- The official question and answer (Q & A) issued by the United States Department of Transportation on December 9, 2011 as institutional guidance based on 49 C.F.R. § 26.55 relative to regular dealers poses two questions that must both be answered 'yes' in order for the DBE firm to receive regular dealer credit equivalent to 60 percent of the value for materials supplied on federally-assisted transportation projects.
- Following is the official Q & A in italics:
 - First, does the firm "regularly" engage in the purchase and sale or lease, to the general public in the usual course of its business, of products of the general character involved in the contract and for which DBE credit is sought?*
 - *Answering this question involves attention to the activities of the business over time, both within and outside the context of the DBE program.*
 - *The distinction to be drawn is between the regular sale or lease of the products in question and merely occasional or ad hoc involvement with them.*
 - *In answering this question, [the Port Authority of NY and NJ] will not insist that every single item the DBE firm supplies be physically present in the firm's store, warehouse, etc. before it is sold to a contractor. However, the establishment in which the firm keeps items it sells to the general public should be more than a token location.*
 - *For example, a mere showroom, the existence of a hard-copy or on-line catalog, or the presence of small amounts of material that make questionable the ability of the firm to effectively supply quantities typically needed on a contract, are generally not sufficient to demonstrate that a firm regularly deals in the items.*
 - Second, is the role the firm plays on the specific contract in question consistent with the regular sale or lease of the products in question, as distinct from a role better understood as that of a broker, packager, manufacturer's representative, or other person who arranges or expedites a transaction?*
 - *For example, a firm that regularly stocks and sells Product X may, on a particular contract, simply communicate a prime contractor's order for Product Y to the manufacturer, acting in a transaction expediter capacity.*
 - *This means that a firm that acts as a regular dealer on one contract does not necessarily act as a regular dealer on other contracts. For example, a firm that acts as a regular dealer on Contract #1 may act simply as a "transaction expediter" or "broker" on Contract #2. It would receive DBE credit for 60 percent of the value of the goods supplied on Contract #1 while only receiving DBE credit for its fee or commission on Contract #2.*
 - *In some circumstances, items are "drop-shipped" directly from a manufacturer's facility to a job site, never being in the physical possession of or transported by a supplier. In many such cases, the supplier's role may involve nothing more than contacting the manufacturer and placing a job-specific order for an item that the manufacturer then causes to be transported to the job site.*
 - *In such a situation, the supplier's role may often be better described as that of a "broker" or "transaction expediter" (see 49 C.F.R. § 26.55(e)(2)(ii)(C)) than as a "regular dealer." In such a case, DBE credit is limited to the fee or commission the firm receives for its services. If the firm does not provide any commercially useful function (i.e., it is simply inserted as an extra participant in a transaction), then no DBE credit can be counted.*
- The Port Authority of NY and NJ propose that primes submit the two questions to DBEs in writing. If the DBE firm answers 'yes' to both questions, then the written documentation would be taken into account in the Port Authority of NY and NJ's good faith effort determination in accordance with Section 26.53 of the federal DBE regulation set forth in Title 49 Code of Federal Regulations Part 26.
- If it were later determined that the DBE misrepresented itself or erroneously concluded that it was acting as a regular dealer, the Port Authority of NY and NJ would strongly consider this documentation in evaluating the actions of the prime and in determining whether the prime exercised reasonable due diligence by obtaining a written regular dealer confirmation from the DBE even though it later turned out to be false.
- Participation would still have to be revised, but the Port Authority of NY and NJ will fully consider the written documentation in its good faith effort review.
- The Port Authority of NY and NJ reserves the right to address any misrepresentation by the DBE firm or the prime consistent with the "Bidders Certification Statement" and other requirements and procedures for determinations of whether a contractor has acted responsibly.

PRE-AWARD DBE TRUCKING COMMITMENT FORM PA 3751A/ 01-15

INSTRUCTIONS:

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

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

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

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

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

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

PRE-AWARD DBE TRUCKING COMMITMENT INFORMATION

DATE: _____ CONTRACTOR NAME: _____

CONTRACT NUMBER: _____ TELEPHONE: _____

NAME OF DBE TRUCKING FIRM: _____

SCOPE OF WORK OF TRUCKING FIRM: _____

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

NUMBER OF TRUCKS _____ + _____ = _____
OWNED LEASED TOTAL

NUMBER OF TRUCKS PERFORMING WORK _____
_____ X _____ = _____
RATE PER DURATION/NUMBER COMMITMENT

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

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

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

SIGNATURE OF PRINCIPAL OR OFFICER OF TRUCKING FIRM: _____

PRINT NAME: _____ TITLE: _____

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

Signature _____ Title _____ Date _____

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

ACKNOWLEDGEMENT BY NOTARY PUBLIC

PRE-AWARD DBE TRUCKING COMMITMENT INFORMATION (reverse)

ACKNOWLEDGEMENT
of

STATE OF _____)

S.S.:

COUNTY OF _____)

On this _____ day of _____, before me personally came and appeared _____ to be known, who being by me duly sworn, did depose and say that he/she resides at _____, that he/she is the _____ of _____ company, that the seal affixed to said Certification is such corporate seal, that it was so affixed by order of the directors of said corporation, and that he/she signed his/her name thereto by like order.

(Notary's Seal or Stamp)

Notary Public
My commission expires: