

THE PORT AUTHORITY OF NY & NJ

**PROCUREMENT DEPARTMENT
4 WORLD TRADE CENTER
150 GREENWICH STREET, 21ST FL.
NEW YORK, NY 10007**

9/30/2015

ADDENDUM # 1

To prospective Bidder(s) on Bid # 43810 for **Second Re-Bid of Manufacture and Deliver a Track Inspection Vehicle for PATH.**

- Originally due back on 10/13/2015, no later than 11:00AM
- Now due back on 11/16/2015, no later than 11:00AM

I. CHANGES/MODIFICATIONS:

- A. The bid due date is hereby extended to 11/16/2015, no later than 11:00AM.
- B. The Question Due Date is hereby extended to 10/13/2015, no later than 11:00 AM.
- C. In Part I, Standard Information for Bidders, delete the Table of Contents in its entirety and replace with the following:

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D. In Part I, Standard Information for Bidders, delete paragraphs 19 and 20 in their entirety and replace with the following:

“19. Disadvantaged Business Enterprises (DBE's)

This Solicitation is subject to the United States Department of Transportation regulations on Disadvantaged Business Enterprises (DBE's) contained in Part 26 of Title 49 of the Code of Federal Regulations. The requirements for the DBE Program are located in the Standard Terms and Conditions of this Solicitation.

For more information on the Port Authority certification process, please refer to the following website:

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

20. Certification of Recycled Materials

Bidders are requested to submit, with their Bid, a written certification entitled “Certified Environmentally Preferable Products / Practices” attached hereto as “Attachment I-A”, attesting that the products or items offered by the Bidder

contain the minimum percentage of post-consumer recovered material in accordance with the most recent guidelines issued by the United States Environmental Protection Agency (EPA), or, for commodities not so covered, the minimum percentage of post-consumer recovered materials established by other applicable regulatory agencies. The data submitted by the Bidder in Attachment I-A is being solicited for informational purposes only.

Recycling Definitions:

For purposes of this numbered section, the following definitions shall apply:

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

- E. In Part III, Contract Specific Terms and Conditions, section 11, Payment, paragraph "a", delete in its entirety and replace with the following:

"a) Payment shall be made in accordance with the Contract Pricing Sheets, minus any deductions to which the invoice may be subject."

- F. In Part III, Contract Specific Terms and Conditions, section 11, Payment, delete in its entirety from "Milestone Payment Schedule" to the end of the section.

- G. In Part V, Specifications, section 1.2.1.2, last line, change "Universal Instruments Corporation (UIC)" to read "International Union of Railways".

- H. In Part V, Specifications, section 5.3, third paragraph, after the words “torque converter” add, “or hydrostatic drive”.
- I. In Part V, Specifications, section 6, subsection 6.1, in the second paragraph, second to last sentence, change “Extra Work” to “Changes”.
- J. In Part V, Specifications, section 6.2.5, first paragraph, delete in its entirety and replace with the following:

“When printed circuit boards are not used, the Contractor shall supply alternative equipment approved by PATH. Where printed circuit boards are used, except proprietary ones, shall be designed and manufactured to the following criteria:”
- K. In Part V, Specifications, section 9.2.2, second line, change “halogen” to “LED”.
- L. In Part V, Specifications, section 9.3, first line, delete the word “halogen”.
- M. In Attachment A – Federal Transit Administration Requirements, delete paragraphs 23 and 24 in their entirety and replace with the following:

“23. Termination for Cause or Convenience

Notwithstanding anything to the contrary elsewhere within this Contract, the Authority may terminate this contract, in whole or in part, at any time by written notice to the Contractor for cause or when it is in the Authority’s best interest, pursuant to 49 C.F.R. 13.36 (i)(2) and as set forth in the “Standard Contract Terms and Conditions,” Part II, Section 14. In the event of termination for convenience, the Contractor shall be paid its costs, including contract close-out costs, as so provided for in the Contract, on work performed up to the time of termination for convenience. See the “Standard Contract Terms and Conditions,” Part II, Section 14(f). The termination requirements apply to all Port Authority contracts in excess of \$10,000.

24. AUTHORITY OF CHIEF ENGINEER - BREACHES AND DISPUTE RESOLUTION

Inasmuch as the public interest requires that the project to which this Contract relates shall be performed in the manner which PATH, acting through the Chief Engineer (or his/her designee), deems best, the (or his/her designee) shall have absolute authority to determine what is or is not necessary or proper for or incidental to the portion thereof, and the Contract Drawings and Specifications shall be deemed merely his present determination on this point. In the exercise of this authority, he/she shall have power to alter the Contract Drawings and Specifications; to require the performance of Work not required by them in their present form, even though of a totally different character from that now required; and to vary, increase and diminish the character, quantity and quality of, or to countermand, any Work now or hereafter required. Such variation, increase, diminution or countermanding need not be based on necessity but may be based on convenience.

If at any time it shall be, from the viewpoint of PATH, impracticable or undesirable in the judgment of the Chief Engineer (or his/her designee) to proceed with or continue the performance of the Contract or any part thereof, whether or not for reasons beyond the control of PATH, he/she shall have authority to suspend performance of any part or all of the Contract until such time as he may deem it practicable or desirable to proceed. Moreover, if at any time it shall be, from the viewpoint of PATH impracticable or undesirable in the judgment of the Chief Engineer (or his/her designee) to proceed with or continue the performance of the Contract or any part thereof whether or not for reasons beyond the control of PATH, he shall have authority to cancel this Contract as to any or all portions not yet performed and as to any materials not yet installed even though delivered. Such cancellation shall be without prejudice to the rights and obligations of the parties arising out of portions already performed, but no allowance shall be made for anticipated profits.

To resolve all disputes and to prevent litigation the parties to this Contract authorize the Chief Engineer (or his/her designee) to decide all questions of any nature whatsoever arising out of, under, or in connection with, or in any way related to or on account of, this Contract (including claims in the nature of breach of Contract or fraud or misrepresentation before or subsequent to acceptance of the Contractor's Bid or Proposal and claims of a type which are barred by the provisions of this Contract) and his/her decision shall be conclusive, final and binding on the parties. His/her decision may be based on such assistance as he/she may find desirable. The effect of his/her decision shall not be impaired or waived by any negotiations or settlement offers in connection with the question decided, whether or not he participated therein himself, or by any prior decision of the Engineer or others, which prior decisions shall be deemed subject to review, or by any termination or cancellation of this Contract provided, however, that notwithstanding the decision reached by the Chief Engineer (or his/her designee) in a review of determinations by the Chief of Construction or Engineer of Construction or Engineer that a particular item of Work is not a Change that is subject to the provisions of the clause hereof entitled "Changes," the Contractor shall be compensated therefor as provided in written orders of the Chief of Construction or Engineer of Construction or Engineer expressly and unmistakably indicating his/her intention to treat Work described therein as Changes issued in accordance with the Changes clause for amounts not in excess of \$250,000.

All such questions shall be submitted in writing by the Contractor to the Chief Engineer (or his/her designee) for his decision, together with all evidence and other pertinent information in regard to such questions, in order that a fair and impartial decision may be made. In any action against PATH relating to any such question the Contractor must allege in his complaint and prove such submission, which shall be a condition precedent to any such action. No evidence or information shall be introduced or relied upon in such an action that has not been so presented to the Chief Engineer (or his/her designee).

This numbered clause shall be governed by and construed in accordance with the law of the State of New York, without giving effect to its choice of law provisions.

- i. Performance During Dispute – Unless otherwise directed by the Port Authority, the Contractor shall continue performance under this Contract while matters in dispute are being resolved.
- ii. Claims for Damages – Should either party to the Contract suffer injury or damage to person or property because of any act or omission of the party or of any of his employees, agents or others for whose acts he is legally liable, a claim for damages therefor shall be made in writing to such other party within five (5) days after the claim arises.
- iii. Rights and Remedies –The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the AGENCY or CONTRACTOR shall constitute a waiver of any right or duty afforded any of them under the Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.”

II. BIDDER'S QUESTIONS AND ANSWERS

The following information is available in response to questions submitted by prospective Bidders. The responses should not be deemed to answer all questions, which have been submitted by Bidders 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 any questions asked by a Bidders does not mean or imply, nor should it be deemed to mean or imply, any meaning, construction, or implication with respect to the terms.

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 Contract. The furnishing of such information by the Port Authority shall not create or be deemed to create any obligation or liability upon it for any reason whatsoever and each Bidder, by submitting its Bid, 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 Commissioners, officers, agents, representatives, or employees, oral or in writing, shall impair or limit the effect of the warranties of the Bidder required by this Bid or Contract and the Bidder agrees that it shall not hold the Port Authority liable or responsible therefor in any manner whatsoever.

The Questions and Answers numbering sequence will be continued sequentially in any forthcoming Addenda that may be issued.

Q1. Can the Contractor request to be added to PATH's existing Railroad Protection Policy, with Contractor paying the premium or can it be eliminated?

A1. The Contractor cannot be added to PATH's policy nor can it be eliminated.

Q2. Is there the possibility of exceeding the indicated dimensions, anyhow respecting the kinematic envelope?

A2. The requirements in section 1.12 represent the clearance of equipment PATH has purchased in the past, where it is known that the equipment will fit into the tight clearance of the PATH system. In order to exceed any of these dimensions, the Contractor must be able to prove that it can still meet all of the requirements found in section 1.14.2.

Q3. May the traction engine be placed also completely under the frame instead of being installed inside the engine room?

A3. Section 2.6.4 does not specify that the traction engine be above or below the frame, that is the responsibility for the Contractor to design.

Q4. It is not clear what is intended to be compliant with the CBTC Signal System. Is this system provided by PATH and the Contractor of the Track Inspection Vehicle will be in charge of the installation on the Track Inspection Vehicle? Or the requirement of compliancy with the CBTC Signal System means, for example, that the Track Inspection Vehicle should not interfere with the signaling system in terms of EMI?

A4. PATH will supply the CBTC system to the Contractor for mounting into the Track Inspection Vehicle. The Contractor must be able to accommodate the CBTC equipment. The Contractor's design must also not interfere with the signal system in terms of EMI.

Q5. The Specification seems to refer to a vehicle with both driven trucks. In case of a single vehicle only one driven truck should be required. Is this correct?

A5. Even on a single vehicle, both trucks must be driven.

Q6. Section 6.2.6.2 Electrical Design Practices. All electrical and electronic control systems shall be designed, and components shall be selected, using the "Reliability Design Handbook" MIL-338B as a guide.

The MIL standard compliant components, would it be possible to supply alternative high quality standards but not classified as MIL standards?

A6. The "Reliability Design Handbook" MIL-338B is for guidance only. The Handbook cannot be cited as a requirement. The Contractor may supply an alternative high quality standard that is not classified as MIL guidance.

Q7. Orian is a specific vendor brand model. Please confirm that the Contractor can propose its own technical solution which is capable of performance equal or better than requested.

A7. See Part II, Contract Specific Information for Bidders, section 1, second paragraph.

Q8. Please confirm that this is considered a minimum requirement for the diagnostic system and not a strict requirement. Our technical solution could allow the simultaneous measurement of gaps and rail profile in flangeway and guardrail exceeding the performances of other designs.

A8. All requirements are a minimum requirement. See A7 above.

Q9. The Riegl laser mirror scanner is provided specifically from one specific vendor. Please confirm that the Contractor can propose any solution which is capable of performance equal or better than requested?

A9. See A7 above.

Q10. The Thermacam a615 system is provided specifically from one specific vendor. Please confirm that the Contractor can propose any solution which is capable of performance equal or better than requested?

A10. See A7 above.

Q11. The ultrasonic testing system is provided specifically from one specific vendor. Please confirm that the Contractor can propose any technical solution which is capable of performance equal or better than requested?

A11. See A7 above.

Q12. The rail surface monitoring system is provided specifically from one specific vendor. Please confirm that the Contractor can propose any technical solution which is capable of performance equal or better than requested?

A12. See A7 above.

This communication should be initialed by you and annexed to your Bid upon submission.

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

THE PORT AUTHORITY OF NY & NJ
SELENE ORTEGA
MANAGER
COMMODITIES & SERVICES DIV.

BIDDER'S FIRM NAME: _____

INITIALED: _____

DATE: _____

QUESTIONS CONCERNING THIS ADDENDUM MAY BE ADDRESSED TO MR.
RICHARD A. GREHL, WHO CAN BE REACHED AT (212) 435-4633 or at
rgrehl@panynj.gov.