

THE PORT AUTHORITY OF NY & NJ

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

11/2/2016

ADDENDUM # 1

To prospective Bidder(s) on Bid # 47462: Supply and Deliver Quadruplexed Medium Voltage Shielded Power Cable to PATH (FTA)

Due back on 11/22/2016, no later than 11:00AM

The following change/modification is hereby made to the solicitation documents:

1. Replace paragraph 3 of the Requests for Quotations (RFQ) with the following paragraph:

“3. The following are bid submittal requirements contained within the Federal Transit Administration (FTA) Requirements and/or solicitation documents:

- a) Attachment A: Federal Transit Administration Contract Provisions for Grants Before December 26, 2014
- b) Attachment A-1: Disadvantaged Business Enterprise (DBE) Program Language
- c) Attachment B: PATH (FTA) Standard Contract Terms and Conditions
- d) Appendix A1: Disadvantaged Business Enterprise (DBE) Program
- e) Appendix A2: DBE Participation Plan and Affirmation Statement
- f) Appendix A4: Information on Solicited Firms
- g) Appendix A5: Pre-Award DBE Trucking Commitment Form
- h) Appendix A6: DBE Regular Dealer Verification Form
- i) Buy America Certification (Rolling Stock)

NOTE: Appendix A-3: Modified DBE Participation Form and Affirmation Statement, is neither included with this solicitation nor required at the time of Bid submission.”

2. Insert the attached document entitled, “Attachment A-1 – Disadvantaged Business Enterprise (DBE) Program” (rev. 8-15-16).

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 DIVISION

BIDDER'S FIRM NAME: _____

INITIALED: _____ DATE: _____

QUESTIONS CONCERNING THIS ADDENDUM MAY BE ADDRESSED TO
JOHN SANTIAGO AT John.Santiago@panynj.gov OR (212) 435-4613.

ATTACHMENT A-1: Disadvantaged Business Enterprise (DBE) Program

A. POLICY

It is the policy of The Port Authority of New York and New Jersey (the "Port Authority" or the "Authority") and its related entities, including Port Authority Trans-Hudson Corporation ("PATH") that Disadvantaged Business Enterprises ("DBEs") are provided the opportunity to participate in the performance of this Contract. Each proposer shall take all necessary and reasonable steps to ensure that its proposal includes DBE participation and performance of work on this Contract, when awarded. This Contract is subject to the United States Department of Transportation ("USDOT") regulations on "DBEs" contained in Part 26 of Title 49 of the Code of Federal Regulations.

The Proposer shall not discriminate on the basis of race, color, national origin, creed/religion, sex, age or handicap/disability in the performance of this contract. The Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of USDOT-assisted contracts. Failure by the Contractor or subcontractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the PANYNJ deems appropriate.

B. GOAL

The Port Authority Office of Business Diversity and Civil Rights ("OBDCR") has established a goal for DBE participation on this Contract, which the proposer will be required to show how it will meet, if awarded this Contract. This goal, expressed as a percentage of the total contract price, including change orders issued pursuant to the changes provision of the contract, is:

DBE Participation Goal: 1%

for firms owned and controlled by socially and economically disadvantaged individuals (as defined in C.5 below) and certified as DBEs by the Authority. Eligible DBE firms are listed on the following Uniform Certification Programs ("UCPs") websites:

New York UCP – <https://nysucp.newnycontracts.com>

New Jersey UCP – <http://www.njucp.net/>

In the event the successful proposer's proposed level of DBE participation is less than this prescribed level of DBE participation, to remain eligible for contract award, the successful proposer must satisfy the good faith efforts requirements set forth in paragraph I.3 below.

OBDCR is responsible for determining compliance by the proposer with DBE Program requirements established for this solicitation and in this Contract. The proposer shall make all DBE Program submissions required by this solicitation to the Port Authority Procurement Department contact with a copy to OBDCR. Once awarded, the successful proposer (Contractor) will make all DBE Program submissions to OBDCR at the following address and email address:

Contract Number:

Name: Jacqueline Carroll

Email: jacarroll@panynj.gov Telephone No.: (201)395-3958

Address: The Port Authority of NY &NJ

2 Montgomery Street, 2nd Fl. Jersey City, NJ 07302

C. **DEFINITIONS**

1. To avoid undue repetition, the following terms, as used in this Agreement, shall be construed as follows: **Bidder or Proposer** can be used interchangeably and **Consultant or Contractor** can be used interchangeably.
2. **Certification** means the process by which a business demonstrates to OBDCR or to a New York State Unified Certification Program Certifying Partner ("NYSUCP") or to a New Jersey Unified Certification Certifying Partner ("NJUCP") that it meets the requirements to be a DBE under USDOT regulations set forth in 49 C.F.R. Part 26.
3. **Disadvantaged Business Enterprise** or DBE is a for-profit small business concern (a) that is at least 51% owned by one or more individuals who are both socially and economically disadvantaged or, in the case of a corporation, in which at least 51% of the stock is owned by one or more such individuals; and (b) whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.
4. **New York State Unified Certification Program Certifying Partners** include the Port Authority of New York & New Jersey, Metropolitan Transportation Authority, the Niagara Frontier Transportation Authority and the New York State Department of Transportation.
5. **New Jersey Unified Certification Program Certifying Partners** include the Port Authority of New York & New Jersey, New Jersey Transit and the New Jersey State Department of Transportation.
6. **Socially and economically disadvantaged individual** means any individual who is a citizen (or lawfully admitted permanent resident) of the United States and who is:
 - a. Any individual OBDCR or a NYSUCP or NJUCP Certifying Partner finds

to be a socially and economically disadvantaged individual on a case-by-case basis.

- b. Any individual in the following groups, members of which are rebuttably presumed to be socially and economically disadvantaged:
 1. Black Americans which includes persons having origins in any of the Black racial groups of Africa;
 2. Hispanic Americans which includes persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South America or other Spanish or Portuguese culture or origin, regardless of race;
 3. Native Americans which includes persons who are American Indians, Eskimos, Aleuts or Native Hawaiians;
 4. Asian-Pacific Americans which includes persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands (Republic of Palau), the Commonwealth of the Northern Marianas Islands, Macao, Fiji, Tonga, Kiribati, Juvalu, Nauru, Federated States of Micronesia, or Hong Kong;
 5. Subcontinent Asian Americans which includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka;
 6. Women; and
 7. Any additional groups whose members are designated as socially and economically disadvantaged by the Small Business Administration ("SBA"), at such time as the SBA designation becomes effective.

D. THE DBE PROGRAM

The Port Authority has established a Disadvantaged Business Enterprise (DBE) program in accordance with applicable United States Department of Transportation (USDOT) regulations in 49 CFR Part 26. The Port Authority receives Federal financial assistance from the Department of Transportation, and as a condition of receiving this assistance, the Port Authority has signed an assurance that it will comply with these regulations. It is the policy of the Port Authority to ensure that DBEs, as defined in 49 CFR Part 26, have an equal opportunity to receive and participate in USDOT-assisted contracts. It is also Port Authority policy:

1. *To ensure nondiscrimination in the award and administration of USDOT-assisted contracts;*
2. *To create a level playing field on which DBEs can compete fairly for USDOT-assisted contracts;*

3. *To ensure that the DBE program is narrowly tailored in accordance with 49 CFR Part 26;*
4. *To ensure that only firms that fully meet regulatory eligibility standards as outlined in 49 CFR Part 26 are permitted to participate as DBEs;*
5. *To help remove barriers to the participation of DBEs in USDOT-assisted contracts; and,*
6. *To assist the development of firms that can compete successfully in the market place outside the DBE program.*

The Director of OBDCR has been delegated as the DBE Liaison Officer. In that capacity, the Director of OBDCR is responsible for implementing all aspects of the DBE program. Implementation of the DBE program is accorded the same priority as compliance with all other legal obligations incurred by the Port Authority in its financial assistance agreements with the USDOT.

The Port Authority has disseminated this policy statement to the Board of Commissioners and all the components of our organization. We have disseminated this statement to DBE and non-DBE business communities that perform work for us on USDOT-assisted contracts through posting on the OBDCR website: <http://www.panynj.gov/business-opportunities/supplierdiversity.html>

E. DBE OBLIGATION

The proposer agrees to take all necessary and reasonable steps to ensure that DBEs have the opportunity to compete for and perform work under this Contract, if awarded. (Note: If the total contract price is increased as a result of change orders, the Contractor shall make a good faith effort to achieve a commensurate increase in DBE participation). Submission of the proposal constitutes a certification and representation by the proposer that good faith efforts will be made to satisfy the DBE goal requirement in paragraph B during contract performance.

Furthermore, the Proposer will ensure that the following clause is placed in every contract or subcontract resulting from this Contract:

“The Contractor or subcontractor shall not discriminate on the basis of race, color, national origin, creed/religion, sex, age or handicap/disability, in the performance of this contract. The Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of USDOT-assisted contracts. Failure by the Contractor or subcontractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the PANYNJ deems appropriate.”

F. SUBMISSION OF DBE UTILIZATION PLAN

By submitting a bid or proposal for this Contract, the proposer assures the Authority that it will meet the foregoing goal and shall submit the DBE Goals Statement and Affirmation Statement form (Appendix A1) with its Proposal. If the proposer determines it cannot make this

assurance, it may nevertheless submit a bid or proposal, but in such event, it shall note on the DBE Goals Statement form the percentage of DBE participation it anticipates, including documentation supporting the good faith efforts made to achieve the goals set forth in the Contract.

The proposer shall submit, with its Proposal, the DBE Participation Plan and Affirmation Statement (Appendix A2) for each DBE firm it intends to use on this Contract. The DBE Participation Plan and Affirmation Statement shall provide the name and address of each DBE firm, a description of the work to be performed, the dollar value of each DBE subcontract and the signature affirmation from each DBE firm participating in this Contract.

The bidder shall submit with its Proposal the completed Information on Solicited Firms form (Appendix A4), listing every firm that provided a quotation to the bidder for any subcontract to be performed under this Contract, whether the firms are DBE certified and whether the firms' quotes were included in the final Proposal.

Bidders who are utilizing trucking firms to meet their DBE goal are directed to complete the "Pre-Award DBE Trucking Commitment Form" (Appendix A5) and submit the form with their Proposals for each DBE used on this Contract.

Bidders who are utilizing materials suppliers to meet their DBE goal are directed to complete the "DBE Regular Dealer Verification Form" (Appendix A6) and submit the form with their Proposals for each DBE used on this Contract.

1. By listing a firm on its DBE Participation Plan and Affirmation Statement (Appendix A2) the proposer is representing the following:
 - a. It intends to use the firm for the work specified in the DBE Participation Plan and Affirmation Statement (Appendix A2) to perform the work specified.
 - b. The firm is a certified DBE in the states of either New York or New Jersey and is technically and financially qualified to perform the work specified and that the firm is available to perform the work.
 - c. If it is awarded the contract, it will enter into a subcontract with such DBE (or an approved substitute), subject to the terms and conditions of this contract, for the work described and at the price set forth in the DBE Participation Plan and Affirmation Statement (Appendix A2).
 - d. It will not substitute a DBE firm listed in its DBE Participation Plan and Affirmation Statement (Appendix A2) unless the Port Authority provides prior written approval in accordance with Paragraph J, below.

G. PROMPT PAYMENT AND RETAINAGE PROVISION

The Contractor agrees to pay each subcontractor under this prime contract for the satisfactory performance of its contract, no later than ten (10) days from the receipt of each payment the

Contractor receives from the Authority. The Contractor agrees further to return all retainage, if any, owed to a subcontractor within ten

(10) days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment from the above referenced time-frame may occur only for good cause following written approval from the Port Authority. This clause applies to both DBE and non-DBE subcontractors. Failure to comply with this section may constitute a breach of contract, entitling the Port Authority to remedies provided herein, in addition to any other available remedy.

H. CREDIT TOWARD DBE GOAL

No credit toward meeting the DBE goal will be allowed unless OBDCR or a NYSUCP or NJUCP Certifying Partner has certified the DBE firm as eligible. Only the value of the work actually performed by the DBE will be counted toward the DBE goal. The DBE shall verify payments on the DBE Payment Request Certification Form attached to all invoices. The Authority will use the following guidelines to determine the amount to be counted toward the DBE goal:

1. OBDCR will credit the entire amount of fees or commissions charged by a DBE firm 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 a USDOT-assisted contract, toward DBE goals, provided OBDCR determines the fee to be reasonable and not excessive as compared with fees customarily allowed for similar services.
2. When a DBE subcontracts part of the work of its contract to another firm, the value of the subcontracted work may be counted toward DBE goals only if the DBE's subcontractor is itself a certified DBE. Work that a DBE subcontracts to a non-DBE firm does not count toward DBE goals.
3. Joint ventures between DBEs and non-DBEs may be counted toward the DBE goal in proportion to the total dollar value of the contract equal to the distinct, clearly defined portion of the work of the contract that the DBE performs with its own forces. Please contact the Office of Business Diversity and Civil Rights at (201) 395-3958 for more information about requirements for such joint ventures.
4. OBDCR will credit expenditures to a DBE subcontractor toward DBE goals, only if the DBE is performing a commercially useful function on the contract.
5. Commercially Useful Function
 - A. A DBE 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 Contractor and the DBE represents standard industry practice, if the arrangement erodes the ownership, control or independence of the DBE or in any other way does not meet the commercially

useful function requirement, that firm shall not be included in determining whether the DBE goal is met and shall not be included in DBE reports. If this occurs with respect to a firm identified as a DBE, the Contractor shall receive no credit toward the DBE goal and may be required to backfill the participation. A DBE 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 DBE participation. A DBE may rebut a determination by the Authority that the DBE is not performing a commercially useful function to the United States Department of Transportation (USDOT) funding agency (for example, FAA, FTA or FHWA).

- B. **Work Force.** The DBE must employ a work force (including administrative and clerical staff) separate and apart from that employed by the Contractor, other subcontractors or their affiliates. This does not preclude the employment by the DBE of an individual that has been previously employed by another firm involved in the Contract, provided that the individual was independently recruited by the DBE in accordance with customary industry practice. The routine transfer of work crews from another employer to the DBE shall not be allowed.
- C. **Supervision.** All Work performed by the DBE must be controlled and supervised by the DBE without duplication of supervisory personnel from the Contractor, their affiliates and other subcontractors performing Work on the Contract. This does not preclude routine communication between the supervisory personnel of the DBE and other supervisors necessary to coordinate the Work.
- D. **Equipment.** DBE subcontractors may supplement their equipment by renting or leasing additional equipment in accordance with customary industry practice. If the DBE obtains equipment from the Contractor, other contractors or their affiliates, the DBE shall provide documentation to the Authority demonstrating that similar equipment and terms could not be obtained at a lower cost from other customary sources of equipment. The required documentation shall include copies of the rental or leasing agreements, and the names, addresses, and terms quoted by other sources of equipment.
- E. If a DBE does not perform or exercise responsibility for at least 30 percent of the total cost of its contract with its own work force, or the DBE subcontracts a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work involved, OBDCR will presume that it is not performing a commercially useful function.

6. Counting DBE Participation

When a certified DBE firm is awarded the Contract, the DBE goals shall be deemed to have been met.

The value of the Work performed by a DBE, including that of a DBE prime contractor, with its own equipment, with its own forces, and under its own supervision, will be

counted toward the DBE goal, provided the utilization is a commercially useful function. Work performed by DBEs will be counted as set forth below. If the Authority determines that some or all of the DBE's 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 DBE goal.

- A. Subcontractors. 100 percent of the value of the Work to be performed by a DBE subcontractor will be counted toward the DBE goal. The value of such Work includes the cost of materials and supplies purchased by the DBE, except the cost of supplies or equipment leased from the Contractor, other subcontractors or their affiliates will not be counted. When a DBE subcontracts part of the work of its contract to another firm, the value of the subcontracted work may be counted toward DBE goals only if the DBE's subcontractor is itself a DBE. Work that a DBE subcontracts to a non-DBE firm does not count toward DBE goals.
- B. Manufacturers/Fabricators. 100 percent of the expenditure to a DBE manufacturer or fabricator will be counted towards the DBE goal.
- C. Material Suppliers. 60 percent of the expenditure to a DBE material supplier will be counted toward the DBE goal. Packagers, brokers, manufacturer's representatives, or other persons who arrange or expedite transactions are not material suppliers within the meaning of this paragraph.
- D. Brokers/Manufacturer's Representatives. 100 percent 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 a DBE broker/manufacturer's representative will be counted toward the DBE 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.
- E. Services. 100 percent of fees or commissions charged by a DBE 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 DBE goal, provided the fee is reasonable and not excessive as compared with fees customarily allowed for similar services.
- F. Trucking Operations. The DBE trucking firm of record is the firm that is listed on the DBE Participation Plan. The DBE trucking firm shall own and operate at least one registered, insured and fully operational truck used for the performance of the Work and shall be responsible for the management and supervision of the entire trucking operation on a particular contract, and there cannot be a contrived arrangement for the purpose of meeting the DBE goal. The DBE trucking firm of record shall control the day-to-day DBE trucking operations for performance of the Work, and shall be responsible for (1) negotiating and executing rental/leasing agreements; (2) hiring and terminating the work force; (3) coordinating the daily trucking needs with the Contractor; and (4) scheduling and dispatching trucks.
 - 1. DBE Owned/Leased Trucks. 100% of the value of the trucking operations the DBE provides for the performance of the work using

trucks it owns and trucks that are registered, insured and operated by the DBE using drivers it employs, will be counted toward the DBE goal.

2. DBE Leased Trucks. The DBE may lease trucks from another DBE, including an owner/operator who is certified as a DBE. 100% of the value of the trucking operations that the lessee DBE provides will be counted toward the DBE goal.
3. Non-DBE Trucks. The DBE may lease trucks from non-DBE firms and owner-operators. The value of these trucking services will be counted toward the DBE goal up to the value of services performed by the DBE trucks used on the Contract. DBE participation can be counted for the value of the services of non-DBE trucks that exceed the value of the services performed by DBE trucks only in the amount of the fee or commission a DBE receives as a result of the lease agreement.

G. Joint Venture Joint ventures between DBEs and non-DBEs will be counted toward the DBE goal in proportion to the total dollar value of the Contract equal to the distinct, clearly defined portion of the Work of the Contract that the DBE performs with its own forces. The joint venture agreement is therefore subject to review by OBDCR, a copy of which is to be furnished by the firm to be awarded the Contract before execution of the Contract.

7. If a firm is not currently certified as a DBE in accordance with 49 CFR Part 26 at the time of the execution of the Contract, OBDCR will not credit the firm's participation toward any DBE goals, except as provided for in 49 CFR Section 26.87(i).
8. When a firm loses its DBE certification, OBDCR will follow the applicable regulations in 49 CFR Section 26.87(j).
 - a. If a contract or subcontract has not been executed with the firm prior to notification of its ineligibility, any participation by the ineligible firm will not be counted toward the contract or overall goal. OBDCR will direct the Contractor to meet the contract goal with an eligible DBE firm or demonstrate good faith efforts to do so.
 - b. If a contract or subcontract has been executed with the firm prior to notification of its ineligibility, the Contractor may continue to receive credit toward its DBE goal for the firm's work.
9. OBDCR will not credit toward the DBE goal the participation of a DBE subcontractor until the amount being counted toward the goal has actually been paid to the DBE, as evidenced by submission of the Statement of Payments to DBE Subcontractors / Lessors / Suppliers and the DBE Payment Request Certification Form.

I. CONTRACT AWARD

1. Only proposers who submit proposals that meet the DBE goal or who demonstrate good faith efforts to meet the DBE goal, as herein provided will be eligible for award of the Contract.

2. If the successful proposer does not reach the DBE goal, the proposer shall nevertheless remain eligible for award of the contract if it can demonstrate to the satisfaction of OBDCR that it has made a good faith effort to meet the DBE goal. In making such a determination, OBDCR shall consider, among other things, the criteria set out in subparagraph 3 below.

3. Demonstration of Good Faith Efforts

To demonstrate a good faith effort to meet the DBE contract goal, a proposer shall submit with the DBE Goals Statement form (Appendix A1) a list of the steps it has taken to obtain DBE participation, together with documentation supporting those steps. Such efforts may be demonstrated by showing the following:

- a. That the proposer attended any pre-solicitation or pre-bid meetings that were scheduled by the Port Authority to inform DBEs of contracting and subcontracting opportunities;
- b. That the proposer advertised in general circulation, trade association, and minority-focus media, at least 15 days before proposal due date, to request DBE subcontract performance on the specific project;
- c. That the proposer provided written notice to a reasonable number of specific DBEs that their interest in the contract was being solicited, in sufficient time to allow the DBEs to participate effectively;
- d. That the proposer followed up initial solicitations of interest by contacting DBEs to determine with certainty whether the DBEs were interested in participating in the project;
- e. That the proposer selected portions of the work to be performed by DBEs in order to increase the likelihood of meeting the DBE goal (including where appropriate, breaking down contracts into economically feasible units to facilitate DBE participation);
- f. That the proposer provided interested DBEs with adequate information about the plans, specifications and requirements of the contract;
- g. That the proposer negotiated in good faith with interested DBEs, not rejecting DBEs as unqualified without sound reasons based on a thorough investigation of their capabilities. Documented efforts of negotiations with DBEs must include at a minimum:
 1. The names, addresses and telephone numbers of DBEs that were considered;
 2. A description of the information provided to DBEs regarding the plans and specifications for portions of the work to be performed;
 3. A statement explaining why agreements with the DBEs could not be reached.
- h. That the proposer made efforts to assist interested DBEs in obtaining bonding,

lines of credit, or insurance required by the Port Authority or Consultant;

- i. That the proposer made efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services; and
- j. That the proposer effectively used the services of available minority/women community organizations; minority/women contractor's groups; local, state and federal minority/women business assistance offices; and other organizations that provide assistance in the recruitment and placement of DBEs.

4. Reconsideration of Good Faith Efforts Determination

In determining whether a proposer has demonstrated good faith efforts, the Port Authority will look at all efforts that the proposer has made. If OBDCR determines that the successful proposer has failed to make good faith efforts to meet the DBE goal, that firm's submission may be deemed non-responsive. The non-responsive firm will have an opportunity for administrative reconsideration, in accordance with the Port Authority's Protest Procedures. In accordance with the Protest Procedures, as part of this reconsideration,

the proposer will have the opportunity to provide written documentation or argument concerning the issue of whether it met the goal or made adequate good faith efforts to do so. In accordance with the Protest

Procedures, a written decision will be sent to the proposer explaining the basis for finding that the proposer did or did not meet the goal or make adequate good faith efforts to do so.

J. DBE MODIFICATIONS

In the event that a proposer wishes to modify its DBE Participation Plan and Affirmation Statement (Appendix A2) after its submission or after a contract is awarded, the proposer must then request approval for the modification from OBDCR in writing. A proposer may not, without OBDCR's prior consent, terminate a DBE subcontractor approved under this contract and then perform the work of the contract with its own forces or those of an affiliate. A modification includes any change to items of work, material, services, subcontract value or DBE firms, which differ from those identified on the approved DBE Participation Plan and Affirmation Statement (Appendix A2). When a DBE subcontractor is terminated or fails to complete its work for any reason, the Contractor must make good faith efforts to find another DBE subcontractor to substitute for the original DBE. These good faith efforts must be directed at finding other DBEs to perform at least the same amount of work under the contract as the former DBE to the extent needed to meet the contract goal. The Contractor must provide OBDCR with any and all documents and information as may be requested with respect to the modification. If OBDCR determines that the Contractor failed to make good faith efforts, the Port Authority may consider such failure a breach of contract, entitling the Port Authority to remedies provided herein, in addition to any and all other available remedies. Subsequent to Contract award, all changes to the DBE Participation Plan must be submitted via a Modified DBE Participation Plan and Affirmation Statement (Appendix A3) to the Manager for review and approval by the Authority's Office of Business Diversity and Civil Rights. For submittal of modifications to the DBE Plan, Contractors are directed to use Appendix A3 which may be downloaded at <http://www.panynj.gov/business-opportunities/pdf/PA4242.pdf>.

K. EEO/NON-DISCRIMINATION

During the performance of this Contract, the Contractor 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 subcontractors and/or vendors under this Contract. Contractor 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, including 49 CFR Part 26.

L. OFFICE OF THE INSPECTOR GENERAL

The Port Authority Office of Inspector General (OIG) is responsible for investigating fraud and misconduct by Port Authority contractors, subcontractors, consultants, suppliers and others, including the DBE Program.

Depending upon the dollar value of the construction project, and regulatory requirements, the OIG might engage the services of an Integrity Monitor who reports to the OIG and assists in monitoring compliance governing the DBE program.

The OIG and its Integrity Monitors may perform on-site investigations and payment verifications, review relevant consultant, contractor, subcontractor and supplier documents, including but not limited to financial records, certificates and licenses, certified payroll reports, and employee sign-in sheets. They may also interview officers and employees of these firms either on-site, at their offices, or at any other location the OIG determines is in the best interest of the Port Authority.

All consultants, contractors, subcontractors, suppliers and others who are participating in the DBE Program in any manner, shall cooperate fully with the Port Authority OIG and shall provide all requested documents immediately upon request. The failure to cooperate may be considered a breach of contract, entitling the Port Authority to remedies provided herein, in addition to any other available remedy.

M. APPENDICES

1. APPENDIX A1: DBE Goals Statement
2. APPENDIX A2: DBE Participation Plan and Affirmation Statement
3. APPENDIX A3: Modified DBE Participation Plan and Affirmation Statement
4. APPENDIX A4: Information On Solicited Firms
5. APPENDIX A5: Pre-Award DBE Trucking Commitment Form
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