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

INVITATION FOR BID/PUBLIC BID OPENING

BID INFORMATION

TITLE: INSPECTION, MAINTENANCE, REPAIR AND EMERGENCY SERVICES FOR THE BUILDING MANAGEMENT SYSTEM AT JOURNAL SQUARE TRANSPORTATION CENTER (JSTC)

BID NO.: 50726
SUBMIT SEALED BIDS BEFORE THE DUE DATE AND TIME TO THE ABOVE ADDRESS WHERE THEY WILL BE PUBLICLY OPENED AND READ

BID DUE DATE: SEPTEMBER 7, 2017     TIME: 11:00 AM

FACILITY INSPECTION: August 31, 2017 (see inside for further details)

BUYER NAME: LUZ SANTANA   PHONE NO.: (212) 435-4625
FAX NO.: (212) 435-3959
EMAIL:

BIDDER INFORMATION
(TO BE COMPLETED BY THE BIDDER)
(PLEASE PRINT)

________________________________________________________________________________________________________
(NAME OF BIDDING ENTITY)

________________________________________________________________________
(ADDRESS)

________________________________________________________________________
(CITY, STATE AND ZIP CODE)

________________________________________________________________________
(REPRESENTATIVE TO CONTACT - NAME & TITLE) (TELEPHONE)

________________________________________________________________________
(FEDERAL TAX I.D. NO.) (FAX NO.)
_____ BUSINESS CORPORATION _____ PARTNERSHIP _____ INDIVIDUAL
_____ OTHER (SPECIFY): ________________________________
INVITATION FOR BID

- COVER PAGE: BID AND BIDDER INFORMATION
- PART I – STANDARD INFORMATION FOR BIDDERS
- PART II – CONTRACT SPECIFIC INFORMATION FOR BIDDERS
- PART III – CONTRACT SPECIFIC TERMS AND CONDITIONS
- PART IV – SIGNATURE SHEET, NAME AND RESIDENCE OF PRINCIPALS AND PRICING SHEET(S)
- PART V – SPECIFICATIONS
- STANDARD CONTRACT TERMS AND CONDITIONS
<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>General Information: The Port Authority of New York and New Jersey</td>
<td>3</td>
</tr>
<tr>
<td>2.</td>
<td>Form and Submission of Bid</td>
<td>3</td>
</tr>
<tr>
<td>3.</td>
<td>Vendor Profile</td>
<td>4</td>
</tr>
<tr>
<td>4.</td>
<td>Acknowledgment of Addenda</td>
<td>4</td>
</tr>
<tr>
<td>5.</td>
<td>Firm Offer</td>
<td>5</td>
</tr>
<tr>
<td>6.</td>
<td>Acceptance or Rejection of Bids</td>
<td>5</td>
</tr>
<tr>
<td>7.</td>
<td>Bidder’s Questions</td>
<td>5</td>
</tr>
<tr>
<td>8.</td>
<td>Additional Information To and From Bidders</td>
<td>5</td>
</tr>
<tr>
<td>9.</td>
<td>Union Jurisdiction</td>
<td>5</td>
</tr>
<tr>
<td>10.</td>
<td>Assessment of Bid Requirements</td>
<td>6</td>
</tr>
<tr>
<td>11.</td>
<td>Bidder’s Prerequisites</td>
<td>6</td>
</tr>
<tr>
<td>12.</td>
<td>Qualification Information</td>
<td>6</td>
</tr>
<tr>
<td>13.</td>
<td>Contractor’s Integrity Provisions</td>
<td>8</td>
</tr>
<tr>
<td>14.</td>
<td>Facility Inspection</td>
<td>8</td>
</tr>
<tr>
<td>15.</td>
<td>Available Documents - General</td>
<td>8</td>
</tr>
<tr>
<td>16.</td>
<td>Pre-award Meeting</td>
<td>9</td>
</tr>
<tr>
<td>17.</td>
<td>Price Preference</td>
<td>9</td>
</tr>
<tr>
<td>18.</td>
<td>MBE/WBE Subcontracting Provisions</td>
<td>9</td>
</tr>
<tr>
<td>19.</td>
<td>Certification of Recycled Materials</td>
<td>9</td>
</tr>
<tr>
<td>20.</td>
<td>City Payroll Tax</td>
<td>10</td>
</tr>
<tr>
<td>21.</td>
<td>Automated Clearing House Enrollment</td>
<td>10</td>
</tr>
<tr>
<td>22.</td>
<td>Additional Bidder Information</td>
<td>11</td>
</tr>
<tr>
<td></td>
<td>ATTACHMENT I-A - Certified Environmentally Preferable Products/Practices</td>
<td>12</td>
</tr>
</tbody>
</table>
PART I - STANDARD INFORMATION FOR BIDDERS

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

The Port Authority of New York and New Jersey (the “Port Authority” or the “Authority”) is an agency of the States of New York and New Jersey, created and existing by virtue of the Compact of April 30, 1921, made by and between the two States, and thereafter consented to by the Congress of the United States. It is charged with providing transportation, terminals and other facilities of trade and commerce within the Port District. The Port District comprises an area of about 1,500 square miles in both States, centering about New York Harbor. The Port District includes the Cities of New York and Yonkers in New York State, and the cities of Newark, Jersey City, Bayonne, Hoboken and Elizabeth in the State of New Jersey, and over 200 other municipalities, including all or part of seventeen counties, in the two States. The Port Authority manages and/or operates all of the region’s major commercial airports (Newark Liberty International, John F. Kennedy International, Teterboro, LaGuardia, Atlantic City International and Stewart International Airports), marine terminals in both New Jersey and New York (Port Newark and Elizabeth, Howland Hook and Brooklyn Piers); and its interstate tunnels and bridges (the Lincoln and Holland Tunnels; the George Washington, Bayonne, and Goethals Bridges; and the Outerbridge Crossing), which are vital “Gateways to the Nation.”

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

2. Form and Submission of Bid

The Bidder shall review carefully every provision of this document, provide all the information required, and sign and return one entire copy to the Port Authority in accordance with the instructions on the Cover Sheet and Part II – Contract Specific Information for Bidders. The Bidder should retain one complete duplicate copy for its own use. The “Signature Sheet” contained herein must be completed and signed by the Bidder. The Pricing Sheet(s) contained herein must also be completed. The Bid shall be sealed in the enclosed self-addressed envelope conspicuously marked with the Bidder’s name, address, and Vendor Number, if available. In addition, the outside of the package must clearly state the Bid Title, the Bid Collective Number and the Bid Due Date. Failure to properly label submissions may cause a delay in identification, misdirection or disqualification of the submissions. In submitting this bid, the Bidder offers to assume the obligations and liabilities imposed upon it herein and expressly makes the representations and warranties required in this document.
All Bids must be received by the bid custodian on or before the due date and time specified on the cover page, at which time they will be publicly opened and read. Bids are only accepted Monday through Friday, excluding Port Authority holidays, between the hours of 8:00 a.m. and 5:00 p.m., via (1) regular mail, (2) express delivery service (e.g. UPS), or (3) hand delivery.

Express carrier deliveries by commercial vehicles can be made via vendors approved by Silverstein Properties, the 4 World Trade Center (4 WTC) Property Manager, through the Vehicle Security Center (VSC). Presently, UPS is the only delivery vendor with approved recurring delivery times.

There is extensive security at the World Trade Center Site. Individuals must present a valid government-issued photo ID to enter 4 WTC. If a Bid is to be hand-delivered or an individual is planning to attend the formal bid opening, please note that only individuals with valid photo identification will be permitted access to the Port Authority's offices. Individuals without valid identification shall be turned away and their packages not accepted. Individuals without packages or carrying small packages or boxes that can be conveyed by hand or on a hand truck may enter through the lobby. All envelopes, packages 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.

Bids that are not received by the bid custodian by the scheduled bid opening date will be considered late.

3. **Vendor Profile**

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

4. **Acknowledgment of Addenda**

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

If the Bidder downloaded this solicitation document, it is the responsibility of the Bidder to periodically check the Port Authority website at http://www.panynj.gov/business-opportunities/Bid-proposal-advertisements.html and download any addenda that might have been issued in connection with this solicitation.
5. Firm Offer
The Bidder offers to provide the Port Authority Trans-Hudson Corporation (“PATH”) the services and to perform all Work in connection therewith required under this Contract, all as specified by the terms and conditions of the Contract, based on the Pricing Sheets provided herein. As used herein, the terms “Port Authority,” or “Authority,” mean the Port Authority of New York and New Jersey acting on behalf of PATH.

EXCEPTIONS TAKEN OR CONDITIONS IMPOSED BY A BIDDER TO ANY PORTION OF THE CONTRACT DOCUMENTS WILL RESULT IN REJECTION OF THE BID.

6. Acceptance or Rejection of Bids
The acceptance of a Bid will be by a written notice signed by an authorized representative on behalf of the Authority. No other act of the Port Authority, its Commissioners, officers, agents or employees shall constitute acceptance of a Bid. The Port Authority reserves the unqualified right, in its sole and absolute discretion, to reject any or all Bids or to accept any Bid, which in its judgment will best serve the public interest and to waive defects in any Bid. No rights accrue to any Bidder unless and until its Bid is accepted.

7. Bidder’s Questions
Any questions by prospective Bidders concerning the Work to be performed or the terms and conditions of the Contract may be addressed to the Contracts Specialist listed on the Cover Sheet of this document. The Contracts Specialist is only authorized to direct the attention of prospective Bidders to the portions of the Contract. No employee of the Port Authority is authorized to interpret any portion of the Contract or to give information in addition to that contained in the Contract. When Contract interpretation or additional information as to the Contract requirements is deemed necessary by the Port Authority, it will be communicated to all Bidders by written addenda issued under the name of the Manager, Commodities & Services Division, Procurement Department of the Port Authority and may be posted on the Port Authority website. Addenda shall be considered part of the Contract.

8. Additional Information To and From Bidders
Should the Authority require additional information from the Bidder in connection with its Bid, such information shall be submitted within the time frame specified by the Port Authority.

If the Bidder is a corporation, a statement of the names and residences of its officers should be submitted on the Name and Residence of Principals Sheet, directly following the Signature Sheet.

9. Union Jurisdiction
All prospective Bidders are advised to ascertain whether any union now represented or not represented at the Facility will claim jurisdiction over any aspect of the
operations to be performed hereunder and their attention is directed to the paragraph entitled “Harmony” in the Standard Contract Terms and Conditions.

10. Assessment of Bid Requirements

The Bidder should carefully examine and study the entire contents of these bid documents and shall make its own determinations as to the services and materials to be supplied and all other things required to be done by the Contractor.

11. Bidder’s Prerequisites

Only Bids from Bidders that can satisfactorily demonstrate meeting the prerequisites specified in Part II hereof at the time of Bid submission will be considered. By furnishing this document to the Bidder, the Port Authority has not made a determination that the Bidder has met the prerequisites or has otherwise been deemed qualified to perform the services. A determination that a Bidder has met the prerequisites is no assurance that it will be deemed qualified in connection with other Bid requirements included herein.

12. Qualification Information

The Port Authority may give oral or written notice to the Bidder to furnish the Port Authority with information and to meet with designated representatives of the Port Authority relating to the Bidder’s qualifications and ability to fulfill the Contractor's obligations hereunder. The requested information shall be submitted no later than three (3) days after said notice unless otherwise indicated. Matters upon which the Port Authority may inquire may include, but not be limited to, the following:

a. The Bidder may be required to demonstrate that it is financially capable of performing this Contract, and the determination of the Bidder's financial qualifications will be made by the Port Authority in its sole discretion. The Bidder shall submit such financial and other relevant information as may be required by the Port Authority from time to time including, but not limited to, the following:

   1. (i) Certified financial statements, including applicable notes, reflecting the Bidder's assets, liabilities, net worth, revenues, expenses, profit or loss and cash flow for the most recent calendar year or the Bidder's most recent fiscal year.

   (ii) Where the certified financial statements set forth in (i) above are not available, then either reviewed or compiled statements from an independent accountant setting forth the aforementioned information shall be provided.

   (iii) Where neither certified financial statements nor financial statements from an independent accountant are available, as set forth in (i) and (ii) above, then financial statements containing such information prepared directly by the Bidder may be submitted; such financial statements, however, must be accompanied by a signed copy of the Bidder's most recent Federal income tax return and a statement in writing from the
Bidder, signed by an executive officer or their authorized designee, that such statements accurately reflect the present financial condition of the Bidder.

Where the statements submitted pursuant to subparagraphs (i), (ii) or (iii) are dated prior to forty-five (45) days before the Bid opening, then the Bidder shall submit a statement in writing, signed by an executive officer of the Bidder or their designee, that the present financial condition of the Bidder is at least as good as that shown on the statements submitted.

2. Bidder’s statement of work on hand, including any work on which a Bid has been submitted, containing a description of the work, the annual dollar value, the location by city and state, the current percentage of completion, the expected date for completion, and the name of an individual most familiar with the Bidder's work on these jobs.

3. The name and address of the Bidder's banking institution, chief banking representative handling the Bidder's account, the Bidder's Federal Employer Identification Number (i.e., the number assigned to firms by the Federal Government for tax purposes), the Bidder's Dun and Bradstreet number, if any, the name of any other credit service to which the Bidder has furnished information, and the number, if any, assigned by such service to the Bidder's account.

b. Information relating to the Bidder's Prerequisites, if any, as set forth in this document.

c. If the Bidder is a corporation: (1) a copy of its Certificate of Incorporation and, if applicable, all Amendments thereto with a written declaration signed by the Secretary of the Corporation with the corporate seal affixed thereto, stating that the copy furnished is a true copy of the Certificate of Incorporation and any such Amendments as of the date of the opening of the Bid and (2) if the Bidder is not incorporated under the laws of the state in which the service is to be performed, a certificate from the Secretary of State of said state evidencing the Bidder's legal qualification to do business in that state.

d. A statement setting forth the names of those personnel to be in overall charge of the service and those who would be exclusively assigned to supervise the service and their specific roles therein, setting forth as to each the number of years of experience and in which functions and capacities each would serve.

e. Information to supplement any statement submitted in accordance with the Standard Contract Terms and Conditions entitled "Contractor's Integrity Provisions."

f. In the event that the Bidder's performance on a current or past Port Authority or PATH contract or contracts has been rated less than satisfactory, the Manager, Purchasing Services Division, may give oral or written notice to the Bidder to furnish information demonstrating to the satisfaction of such Manager that, notwithstanding such rating, such performance was in fact satisfactory or that the circumstances which gave rise to such unsatisfactory
rating have changed or will not apply to performance of this Contract, and that such performance will be satisfactory.

g. The Bidder recognizes that it may be required to demonstrate to the satisfaction of the Port Authority and PATH that it in fact can perform the services as called for in this Contract and that it may be required to substantiate the warranties and representations set forth herein and the statements and assurances it may be required to give.

Neither the giving of any of the aforesaid notices to a Bidder, the submission of materials by a Bidder, any meeting which the Bidder may have with the Port Authority, nor anything stated by the Port Authority and/or PATH in any such meeting shall be construed or alleged to be construed as an acceptance of said Bidder's Bid. Nothing stated in any such meeting shall be deemed to release any Bidder from its offer as contained in the Bid.

13. Contractor’s Integrity Provisions

By submitting a Bid, Bidders shall be deemed to have made the certifications contained in the clauses entitled “Certification of No Investigation (criminal or civil anti-trust), Indictment, Conviction, Debarment, Suspension, Disqualification and Disclosure of Other Information,” and “Non-Collusive Bidding, and Code of Ethics Certification, Certification of No Solicitation Based On Commission, Percentage, Brokerage, Contingent or Other Fees” contained within the Standard Terms and Conditions within these bid documents. If the Bidder is unable to make the certifications contained therein the Bidder shall submit a statement with its Bid explaining why any such certification(s) cannot be made. Such a submission shall be submitted in a separate envelope along with your Bid, clearly marked “CERTIFICATION STATEMENT.”

14. Facility Inspection

Details regarding the Facility inspection for all parties interested in submitting a Bid are stipulated in Part II hereof. All Bidders must present company identification and photo identification for access to the Facility.

15. Available Documents - General

Certain documents, listed in Part II hereof, will be made available for reference and examination by Bidders either at the Facility Inspection, or during regular business hours. Arrangements to review these documents at a time other than the Facility Inspection may be made by contacting the person listed in Part II as the contact for the Facility Inspection.

These documents were not prepared for the purpose of providing information for Bidders upon this Contract but they were prepared for other purposes, such as for other contracts or for design purposes for this or other contracts, and they do not form a part of this Contract. PATH 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 inferences or conclusions to be drawn there from.
16. Pre-award Meeting

The lowest qualified Bidder may be called for a pre-award meeting prior to award of the Contract.

17. Price Preference

A price preference may be available for Minority/Women Business Enterprises (MBE/WBEs) or Small Business Enterprises (SBEs) as set forth in the Standard Contract Terms and Conditions.

18. MBE/WBE Subcontracting Provisions

Bidders shall use every good-faith effort to provide for participation by Port Authority certified Minority Business Enterprises (MBEs) and Port Authority certified Woman-owned Business Enterprises (WBEs) in all purchasing and subcontracting opportunities associated with this Contract, including purchase of equipment, supplies and labor services, in accordance with the “MBE/WBE Subcontracting Provisions” contained within Part III, and the section of the Standard Terms and Conditions entitled “MBE/WBE Good Faith Participation.”

19. 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
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.

20. City Payroll Tax

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

a. City of Newark, New Jersey for services performed in Newark, New Jersey;

b. City of New York, New York for services performed in New York, New York; and

c. City of Yonkers, New York for services performed in Yonkers, New York.

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

21. Automated Clearing House Enrollment

The Port Authority of New York and New Jersey is transitioning to an all electronic method of paying its vendors and contractors via an Automated Clearing House (ACH) funds transfer. The Contractor must complete the Port Authority’s “Authorization Agreement For Direct Deposits And Direct Payments (ACH Credits)” form, which is available at http://www.panynj.gov/business-opportunities/pdf/ach-authorization-form.pdf, in order to receive payment. To avoid delays in payments for commodities and services provided, vendors and contractors must be enrolled in ACH. Printed accounts payable checks will not be issued. The Authorization Agreement shall remain in full force and effect until the Port Authority has received written notification from the Contractor of its termination in such time and in such manner as to afford the Port Authority and the depository financial institution(s) a reasonable opportunity to act on it. Any questions on this initiative may be
directed to the ACH Enrollments contact line at 201 216-6002 or emailed to
ACHENROLLMENT@PANYNJ.GOV.

22. Additional Bidder Information

Prospective Bidders are advised that additional vendor information, including but not
limited to, forms, documents and other information, including protest procedures,
may be found on the Port Authority website at: http://www.panynj.gov/business-
opportunities/become-vendor.html
ATTACHMENT I-A - Certified Environmentally Preferable Products/Practices

Bidder Name: _____________________________ Date: _______________________________

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

1. Packaging
Has the Bidder implemented any of the following environmental initiatives? (A checkmark indicates “Yes”)

____ Use of corrugated materials that exceed the required minimum EPA recommended post-consumer recycled content

____ Use of other packaging materials that contain recycled content and are recyclable in most local programs

____ Promotes waste prevention and source reduction by reducing the extent of the packaging and/or offering packaging take-back services, or shipping carton return

____ Reduces or eliminates materials which have been bleached with chlorine or chlorine derivatives

____ Eliminates any packaging that may contain polyvinyl chloride (PVC), or polystyrene or heavy metals.

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

2. Business Practices / Operations / Manufacturing
Does the Bidder engage in practices that serve to reduce or minimize an impact to the environment, including, but not necessarily limited to, the following items? (A checkmark indicates “Yes”)

____ Recycles materials in the warehouse or other operations

____ Use of alternative fuel vehicles or vehicles equipped with diesel emission control devices for delivery or transportation purposes

____ Use of energy efficient office equipment or signage or the incorporation of green building design elements

____ Use of recycled paper (that meets federal specifications) in their marketing and/or resource materials

____ Other sustainable initiative

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

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

☐ Yes ☐ No If yes, Bidder shall attach a description of the training offered and the specific criteria targeted by the training.

4. Certifications
Has the Bidder or any of its manufacturers and/or subcontractors obtained any of the following product / industry certifications? (A checkmark indicates “Yes”)

____ ISO 14000 or adopted some other equivalent environmental management system

____ Other industry environmental standards (where applicable), such as the CERES principles, LEED Certification, C2C Protocol, Responsible Care Codes of Practice or other similar standards

____ Third Party product certifications such as Green Seal, Scientific Certification Systems, Smartwood, etc.

If yes, Bidders should attach copies of the certificates obtained.

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

____________________________________Name                         __________________Date

PART I – STANDARD INFORMATION FOR BIDDERS                                      PART I - 12
Rev. 10/23 15 (PATH)
PART II – CONTRACT SPECIFIC INFORMATION FOR BIDDERS,

TABLE OF CONTENTS

1. Service(s) Required................................................................. 2
2. Location(s) Services Required.................................................. 2
3. Expected Date of Commencement of Contract.......................... 2
4. Contract Type............................................................................ 2
5. Duration of Contract ................................................................. 2
6. Option Period(s)...................................................................... 2
7. Price Adjustment during Option Period(s) (Index Based)........... 2
8. Extension Period....................................................................... 2
9. Facility Inspection.................................................................... 2
10. Specific Bidder’s Prerequisites.................................................. 3
11. Available Documents............................................................... 4
12. Contractor Staff Background Screening................................. 4
The following information may be referred to in other parts hereof, or further detailed in other parts hereof, if applicable.

1. **Service(s) Required**
   Inspection, Maintenance, Repair and Emergency Services for the Building Management System.

2. **Location(s) Services Required**
   Port Authority Trans Hudson ("PATH"), Journal Square Transportation Center ("JSTC"), as more fully described in the definition of “Facility” in Part V (the “Specifications.”)

3. **Expected Date of Commencement of Contract**
   On or about October 1, 2017.

4. **Contract Type**
   Unit Price, Service Contract.

5. **Duration of Contract**
   Three (3) years, expiring on or about September 30, 2020.

6. **Option Period(s)**
   There shall be up to two (2), two (2) year Option Period(s).

7. **Price Adjustment during Option Period(s) (Index Based)**
   Price adjustment during the Option Period(s) shall be pursuant to the clause entitled "Price Adjustment" in Part III hereof.

8. **Extension Period**
   120-Day Extension Applicable

9. **Facility Inspection**
   **Date and Time:** Thursday, August 31, 2017 at 11AM
   All interested parties shall meet at the Journal Square Transportation Center (JSTC), One PATH Plaza, 7th Floor, Large Conference Room, Jersey City, NJ 07310.

   Bidders should contact Anthony Romano at aromano@panynj.gov or 201-216-6448 Monday through Friday, between the hours of 8 a.m. and 3 p.m., Eastern Time, at least 24-hours prior to the Facility Inspection to confirm attendance. Government
issued photo identification is required to gain access to the Facility for the site inspection.

10. Specific Bidder’s Prerequisites

a. The Bidder shall have had at least three (3) years of continuous experience immediately prior to the date of submission of its Bid in the management and operation of a business that provides inspection, maintenance, testing and repair services of building management systems and during that time shall have actually engaged in providing said or such services to commercial or industrial accounts under contract. The Bidder may fulfill this prerequisite if the Bidder can demonstrate to the satisfaction of the Port Authority that the persons or entities owning and controlling the Bidder have had a cumulative total of at least three (3) years of experience immediately prior to the date of the submission of its Bid in the management and operation of a business actually engaged in providing these services to commercial or industrial accounts under contract during that time, or have owned and controlled other entities which have actually engaged in providing the above described services during that time period.

b. During the time period stated in (a) above, the Bidder, or persons or entities owning and controlling the Bidder, shall have satisfactorily performed or shall be performing under at least one (1) contract requiring similar services of similar scope to those required under this Contract.

c. The Bidder shall have had in its last fiscal year, or the last complete calendar year immediately preceding the opening of its Bid, a minimum of $250,000 annual gross income from the type of service required under this Contract.

d. In the event a bid is submitted by a joint venture the foregoing prerequisites will be considered with respect to such Bid as follows: The prerequisite in subparagraph (a) and (b) above, will be considered satisfied if the joint venture itself, or any of its participants individually, can meet the requirements. The prerequisite in subparagraph (c) above, will be considered satisfied if the gross income of the joint venture itself meets the prerequisite or the gross income of the participants in the joint venture cumulatively meets the prerequisite. If a joint venture which has not been established as a distinct legal entity submits a bid, it and all participants in the joint venture shall be bound jointly and severally and each such participant in the joint venture shall execute the bid and do each act and thing required by this Invitation for Bid. On the original bid and wherever else the Bidder’s name would appear, the name of the joint venture Bidder should appear if the joint venture is a distinct legal entity. If the Bidder is a common law joint venture, the names of all participants should be listed followed by the words “acting jointly and severally”. All joint venture Bidders must provide documentation of their legal status.

Proof that the above prerequisites are met should be submitted with the Bid.
11. Available Documents

The following document will be made available for reference and examination at the Facility Inspection:

Inspection, Maintenance and Repair Services for the Automatic Temperature and Building Automatic Systems at PATH’s JSTC; Contract #4600008635

These documents were not prepared for the purpose of providing information for Bidders upon the present Contract but they were prepared for other purposes, such as for other contracts or for design purposes for this or other contracts, and they do not form a part of this Contract. The Port Authority/PATH 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 therefrom. They are made available to the Bidders merely for the purpose of providing them with such information as is in the possession of the Port Authority/PATH, whether or not such information may be accurate, complete or pertinent or of any value to the bidders.

12. Contractor Staff Background Screening

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

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

**PART III – CONTRACT SPECIFIC TERMS AND CONDITIONS**

1. General Agreement .......................................................... 2
2. Duration .............................................................................. 2
3. Payment ............................................................................... 3
4. Price Adjustment ................................................................. 4
5. Liquidated Damages .............................................................. 5
6. Insurance Procured by the Contractor ........................................... 6
7. Increase and Decrease in Areas or Frequencies ................................. 10
8. Extra Work ............................................................................ 10
9. MBE/WBE Subcontracting Provisions ............................................ 12
PART III – CONTRACT SPECIFIC TERMS AND CONDITIONS

1. General Agreement

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

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

2. Duration

a) The initial term of this Contract (hereinafter called the “Base Term”) shall commence on or about the date specified in Part II hereof, on the specific date set forth in the Port Authority’s written notice of bid acceptance (hereinafter called the “Commencement Date”), and unless otherwise terminated, revoked or extended in accordance with the provisions hereof, shall expire as specified in Part II hereof, (hereinafter called the “Expiration Date”).

b) If specified as applicable to this Contract and set forth in Part II hereof, the Port Authority shall have the right to extend this Contract for additional period(s), either through an extension or an option (hereinafter collectively referred to as the “Option Period(s)” following the Expiration Date, upon the same terms and conditions subject only to adjustments of charges, if applicable to this Contract, as may be hereinafter provided in the paragraph entitled “Price Adjustments”. If the Port Authority shall elect to exercise the Option(s) to extend this Contract, then, no later than thirty (30) days prior to the Expiration Date, the Port Authority shall send a notice that it is extending the Base Term of this Contract, and this Contract shall thereupon be extended for the applicable Option Period. If the Contract provides for more than one Option Period, the same procedure shall apply with regard to extending the term of this Contract for succeeding Option Periods.

c) Unless specified as not applicable to this Contract in Part II hereof, the Port Authority shall have the absolute right to extend the Base Term for an additional period of up to one hundred and twenty (120) days subsequent to the Expiration Date of the Base Term, or the Expiration Date of the final exercised Option.
Period (hereinafter called the “Extension Period”), subject to the same terms and conditions as the previous contract period. The prices quoted by the Contractor for the previous contract period shall remain in effect during this Extension Period without adjustment. If it so elects to extend the term of Contract, the Port Authority will advise the Contractor, in writing, that the term is so extended, and will stipulate the length of the extended term, at least thirty (30) days prior to the expiration date of the previous contract period.

3. Payment

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

a) Payment shall be made in accordance with the prices for the applicable service (during the applicable Contract year) as they appear on the Pricing Sheet(s), as the same may be adjusted from time to time, minus any deductions for services not performed and/or any liquidated damages to which the invoice may be subject and/or any adjustments as may be required pursuant to increases and decreases in areas or frequencies, if applicable. All Work must be completed within the time frames specified or as designated by the Superintendent/Manager.

b) The Contractor shall submit to the Superintendent/Manager by the fifth day of each month following the month of commencement of this Contract and on or by the fifth day of each month thereafter (including the month following the termination, revocation or expiration of this Contract) a complete and correct invoice for the Work performed during the preceding month accompanied by such information as may be required by the Superintendent/Manager for verification. The invoice must show the Contractor's Federal Tax Identification Number. Payment will be made within thirty (30) days of PATH’s verification of the invoice.

Invoices shall be submitted to:

Port Authority Trans Hudson Corporation
Attention: Mr. Anthony Romano
Journal Square Transportation Center
One PATH Plaza, 7th Floor
Jersey City, NJ 07310
c) No certificate, payment, acceptance of any Work or any other act or omission of any representative of PATH shall operate to (1) release the Contractor from any obligation under or upon this Contract, or to (2) estop PATH from showing at any time that such certificate, payment, acceptance, act or omission was incorrect or to(3) preclude PATH from recovering any monies paid in excess of those lawfully due or (b) to which PATH may be entitled on account of any damage sustained by PATH and attributable to any act or omission of the Contractor.

d) In the event an audit of received invoices should indicate that the correct sum due the Contractor for the relevant billing period is less than the amount actually paid by PATH, the Contractor shall pay to PATH the difference promptly upon receipt of PATH’s statement thereof. PATH may, however, in its discretion elect to deduct said sum or sums from any subsequent monthly payments payable to the Contractor hereunder.

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

4. **Price Adjustment**

For each year of any Option Period that is applicable to this Contract and is exercised hereunder, (excluding the 120 day Extension Period as described in the paragraph entitled “Duration” in Section 2 above and Contractor’s Pricing Sheet “D” entitled “Compensation for Parts and Material”, hereof) The Port Authority shall adjust the amounts payable to the Contractor utilizing the Consumer Price Index for all Urban Consumers; Series Id: CUURA101SA0L2; Not Seasonally Adjusted; New York-Northern New Jersey-Long Island, NY-NJ-CT-PA area; all items less shelter; 1982-1984=100, published by the Bureau of Labor Statistics of the United States Department of Labor (the “Price Index”).

For the first two (2) year Option Period of the Contract, the Price Index shall be determined for the months of April 2019 and April 2020. The amounts payable to the Contractor in the final year of the Base Term shall be multiplied by a fraction the numerator of which is the Price Index for April 2020 and the denominator of which is the Price Index for April 2019. The resulting product shall be the amounts payable to the Contractor in the first two (2) year Option Period.

For the second two (2) year Option Period of the Contract, the Price Index shall be determined for the months of April 2020 and April 2021. The amounts payable to the Contractor in the second year of the first Option Period shall be multiplied by a
fraction the numerator of which is the Price Index for April 2020 and the denominator of which is the Price Index for April 2021. The resulting product shall be the amounts payable to the Contractor in the second two (2) year Option Period.

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

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

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

5. Liquidated Damages
   a) The Contractor’s obligations for the performance and completion of the Work within the time or times provided for in this Contract are of the essence of this Contract. In the event that the Contractor fails to satisfactorily perform all or any part of the Work required hereunder in accordance with the requirements set forth in the Specifications (as the same may be modified in accordance with provisions set forth elsewhere herein) then damages for breach by the Contractor may be liquidated as follows but only at an amount which is reasonable in the light of the anticipated or actual harm caused by the breach, the difficulties of proof of loss, and the inconvenience or nonfeasibility of otherwise obtaining an adequate remedy, as follows:

   i. **Failure to perform any services in the Specification**
      In the event that during any monthly period the Contractor fails to perform all or any part of the Services as specified in Contract Specifications as the same may, as hereinafter provided, be revised, satisfactorily or at the frequencies set forth herein, the compensation payable by PATH to the Contractor for said monthly period shall be reduced by an amount equal to the product obtained by multiplying two hundred percent (200%) of the charge per unit of measure for the applicable service for the item of work the Contractor performs or unsatisfactorily performs the operation for inspection or maintenance multiplied by the number of days or number of hours for inspection or maintenance, if such services are not rendered.
ii. **Failure to Provide Required or Requested Information**

In the event that, for any reason, the Contractor fails to maintain or provide or have available when required or requested by PATH or fails to submit any documentation, reports or records as required, the amount payable by PATH to the Contractor hereunder shall be reduced by an amount equal to fifty ($50) per day multiplied by the number of days or fractions of days thereof the Contractor fails to maintain or provide any documentation, reports or records.

iii. **Failure to wear uniform/ID**

In the event that the Contractor’s employee fails to comply with the uniform, shoes, and identification requirements as set forth herein, then the amount payable hereunder shall be reduced by an amount equal to fifty ($50) per violation multiplied by the number of days or fractions of days thereof that the Contractor employees fail to comply with the uniform and/or identification requirements.

iv. **Failure to respond to an emergency**

If the Contractor fails to respond to an emergency within the response time stipulated in the Specifications, then the amount payable to the Contractor under this Contract shall be reduced by an amount equal to the product obtained by multiplying two hundred percent (200%) of the “All-Inclusive Charge Per Labor-Hour” inserted in the “Contractor’s Pricing Sheet “C” – Emergency Service Labor” for each hour or part thereof, past the response time required hereunder, that the Contractor fails to provide the requested service.

b) The Superintendent/Manager shall determine whether the Contractor has performed in a satisfactory manner and their determination shall be final, binding and conclusive upon the Contractor.

c) Failure of the Superintendent/Manager or PATH to impose liquidated damages shall not be deemed PATH acceptance of unsatisfactory performance or a failure to perform on the part of the Contractor or a waiver of its remedies hereunder.

6. **Insurance Procured by the Contractor**

The Contractor and its subcontractor(s) shall take out, maintain, and pay the premiums on Commercial General Liability Insurance, for the life of the Contract 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 Contractor under this Contract including but not limited to premise-operations, products and completed operations, and independent contractors coverage, with contractual liability language covering the obligations assumed by the Contractor under this Contract and, if vehicles are to be used to carry out the performance of this Contract, then the Contractor shall also
take out, maintain, and pay the premiums on Automobile Liability Insurance covering any autos in the following minimum limits:

**Commercial General Liability Insurance** - $5 million combined single limit per occurrence for bodily injury and property damage liability.

**Automobile Liability Insurance** - $5 million combined single limit per accident for bodily injury and property damage liability.

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 least the following coverages:

- Contractual Liability to cover liability assumed under the Contract;
- Independent Contractor’s Coverage;
- Premise-Operations, Products and Completed Operations Liability Insurance;
- Explosion, Collapse and Underground Property Damage
- The insurance coverage (including primary, excess and/or umbrella) hereinafter afforded by the Contractor and all subcontractor(s) shall be primary insurance and non-contributory with respect to the additional insureds;
- Excess/umbrella policies shall “follow form” to the underlying policy;
- Excess/umbrella policies shall have a liberalization clause with drop down provision;
- To the extent any coverage the Contractor and subcontractor(s) obtains and/or maintains under this Contract contains “Other Insurance” language or provisions, such 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 Contractor and/or its subcontractors obtains and/or maintains insurance in an amount greater than the minimum limits required under this Contract, then the full limits of that insurance coverage will be available to respond to any claim asserted against the additional insureds that arises out of or is in any way connected with this Contract;
- 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 endorsed to and 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” 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). 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 premise-operations, products-completed operations on the Commercial General Liability Policy. Such additional insureds status shall be provided regardless of privity of contract between the parties. The liability policy (ies) and certificates of insurance shall contain separation of insured and severability of interests clauses for all policies 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 Contractor is responsible for all deductibles and losses not covered by commercially procured insurance. Any portion of the coverage to be provided under a Self-Insured Retention (SIR) of the Contractor is subject to the review and approval of the General Manager, Risk Finance. Furthermore, any insurance or self-insurance maintained by the above additional insureds shall not contribute to any loss or claim.

If any of the Work is to be done on or at Port Authority facilities by subcontractors and, if the Contractor requires its subcontractors to procure and maintain such insurance in the name of the Contractor, 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 section known as “Insurance Procured by the Contractor”.

All insurance coverage shall be provided by the Contractor and/or by or for any of its subcontractors at no additional expense to the Port Authority and its related entities. A copy of this section titled “Insurance Procured by the Contractor” shall be given to your insurance agent and subcontractors and shall form a part of the covered contract or subcontract for insurance purposes in furtherance of the insurance requirements under this Contract.

Further, it is the Contractor’s responsibility to maintain, enforce and ensure that the type of coverages and all limits maintained by it and any of all subcontractors are accurate, adequate and in compliance with the Port Authority requirements; and the Contractor is to retain a copy of its subcontractors’ certificates of insurance. All certificates of insurance shall be turned over to the Port Authority prior to the start of work, including subcontractors’ work, and upon completion of the Contract.

The insurer(s) shall not, without obtaining the express advance written permission from the General Counsel of the Port Authority and PATH, raise any defense involving in any way the jurisdiction of the Tribunal over the person of the Port Authority and PATH, the immunity of the Port Authority and PATH, its Commissioners, officers, agents or employees, the governmental nature of the Port Authority and PATH, or the provisions of any statutes respecting suits against the Port Authority and PATH.
The Contractor and its subcontractor(s) shall also 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 million per each accident.

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 Port Authority Att: Facility Contract Administrator, at the location where the work will take place with a copy to the General Manager, Risk Finance.

The Port Authority may, at any time during the term of this Contract, change or modify the limits and coverages of insurance. Should the modification or change results in an additional premium, the General Manager, Risk Finance for the Port Authority may consider such cost as an out-of-pocket expense.

Within five (5) days after the award of this Contract and prior to the start of work, the Contractor must submit an original certificate of insurance to the Port Authority Facility Contract Administrator, 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 cancellation notice endorsement and stating the contract number prior to the start of work. The Contractor is also responsible for maintaining and conforming to all insurance requirements from the additional insureds and their successors or assigns. The General Manager, Risk Finance must approve the certificate(s) of insurance before any work can begin. Upon request by the Port Authority, the Contractor shall furnish to the General Manager, Risk Finance, a certified copy of each policy, including the premiums.

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

Renewal certificates of insurance or policies shall be delivered to the Port Authority Facility Contractor Administrator, 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 General Manager, Risk Management must approve the renewal certificate(s) of insurance before work can resume on the facility. If at any time any of the certificates or policies shall become unsatisfactory to the Port Authority, the Contractor shall promptly obtain a new and satisfactory certificate and policy and provide same to the Port Authority.
Failure by the Contractor 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 Contract without limitation, shall be deemed a material breach of contract and may be a basis for termination of this Contract by the Port Authority.

The requirements for insurance procured by the Contractor and subcontractor(s) shall not in any way be construed as a limitation on the nature or extent of the contractual obligations assumed by the Contractor under this Contract. The insurance requirements are not a representation by the Port Authority as to the adequacy of the insurance necessary to protect the Contractor against the obligations imposed on it by law or by this or any other contract.

7. **Increase and Decrease in Areas or Frequencies**
   
The Superintendent/Manager shall have the right, at any time and from time to time in their sole discretion, to increase and/or decrease the frequencies of all or any part of the services required hereunder or to add areas not described herein in the Specifications or to remove areas or parts of areas which are hereunder so described. In the event the Superintendent/Manager decides to change any frequencies or areas such change shall be by written notice given to the Contractor not less than fifteen (15) days prior to the effective date of said changes, said changes to be effective upon the date specified in said notice.

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

   Where no specific Unit Price has been quoted for the type of services to be increased or decreased, the Superintendent/Manager shall have the right to negotiate the compensation to reflect such change, whether an increase or decrease in areas or frequencies, which, in the opinion of the Superintendent/Manager, are necessary to complete the work, by multiplying the increased or decreased amount by the negotiated rate.

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

   No such changes in areas or frequency will be implemented which results in a total increase or decrease in compensation that is greater than fifty percent (50%) of the Total Estimated Contract Price for the Base Term or, if changes are to be implemented during an Option Period, fifty percent (50%) for that Option Period.

   Any increases in frequencies or areas shall not constitute Extra Work and, as such, shall not be limited by the Extra Work provisions of this Contract.

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

An increase in area or frequency does not constitute Extra Work, but shall be compensable based on the prices in the Pricing Sheet(s) and the paragraph herein titled “Increase or Decrease in Areas or Frequencies”.

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

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

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

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

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

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

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

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

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

The Contractor shall supply the amount of materials, supplies, equipment and personnel
required by the Superintendent/Manager within three (3) business days following the receipt
of written or verbal notice from the Superintendent/Manager, or in the case of an emergency
as determined by the Superintendent/Manager, within twenty-four (24) hours following the
receipt by the Contractor of the Superintendent/Manager’s written or oral notification. Where
oral notification is provided hereunder, the Superintendent/Manager will thereafter confirm
the same in writing.

All Extra Work shall be billed to PATH on a separate invoice on a monthly basis.


The Contractor shall use every good-faith effort to provide for participation by Port
Authority certified Minority Business Enterprises (MBEs) and Port Authority certified
Woman-owned Business Enterprises (WBEs).
## TABLE OF CONTENTS

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. SIGNATURE SHEET</td>
<td>2</td>
</tr>
<tr>
<td>2. NAME AND RESIDENCE OF PRINCIPALS SHEET</td>
<td>3</td>
</tr>
<tr>
<td>3. PRICING SHEET(S)</td>
<td>4</td>
</tr>
<tr>
<td>Entry of Prices</td>
<td>4</td>
</tr>
</tbody>
</table>
PART IV – SIGNATURE SHEET, NAME AND RESIDENCE OF PRINCIPALS SHEET AND PRICING SHEET(S)

1. SIGNATURE SHEET
OFFER: The undersigned offers and agrees to furnish to the Port Authority of New York and New Jersey the services and/or materials in compliance with all terms, conditions, specifications and addenda of the Contract. Signature also certifies understanding and compliance with the certification requirements of the standard terms and conditions as contained in the Standard Contract Terms and Conditions. This offer shall be irrevocable for one hundred twenty (120) days after the date on which the Port Authority opens this bid.

ONLY THE COMPANY NAMED AS THE BIDDING ENTITY BELOW WILL RECEIVE PAYMENT. THIS MUST BE THE SAME NAMED COMPANY AS INDICATED ON THE COVER SHEET

Bidding Entity____________________________________________________
Bidder’s Address____________________________________________________
City, State, Zip______________________________________________________
Telephone No._______________________ FAX__________________________
Email______________________________ EIN# _________________________

SIGNATURE__________________________________ Date______________
Print Name and Title_________________________________________________

ACKNOWLEDGEMENT:
STATE OF: ____________________
COUNTY OF: __________________
On this ___day of______________, 20___, personally came before me, ____________________, who duly sworn by me, did depose that (s)he has knowledge of the matters herein stated, that they are in all respects true and that (s)he has been authorized to execute the foregoing offer and statement of irrevocability on behalf of said corporation, partnership or firm.

_____________________
Notary Public

NOTE: If a joint venture is bidding, duplicate this Signature Sheet and have each party to the joint venture sign separately and affix to the back of this Signature Sheet.

Bidder attention is called to the certification requirements contained in the Standard Contract Terms and Conditions, Part III. Indicate below if a signed, explanatory statement in connection with this section is attached hereto. □

If certified by the Port Authority as an SBE or MWBE: ___________ (indicate which one and date).
2. NAME AND RESIDENCE OF PRINCIPALS SHEET

Names and Residence of Principals of Bidder. If general or limited partner, or individual, so indicate.

<table>
<thead>
<tr>
<th>NAME</th>
<th>TITLE</th>
<th>ADDRESS OF RESIDENCE</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>(Do not give business address)</td>
</tr>
</tbody>
</table>
3. **PRICING SHEET(S)**

**Entry of Prices**

a. The prices quoted shall be written in figures, in ink, preferably in black ink where required in the spaces provided on the Pricing Sheet(s) attached hereto and made a part hereof. Prices must be quoted in United States Dollars. All figures inserted will be interpreted as being quoted in United States Dollars.

b. All Bidders are asked to ensure that all charges quoted for similar operations in the Contract are consistent.

c. Prices must be submitted for each Item required on the Pricing Sheet(s). Bidders are advised that the Items on the Pricing Sheet(s) correspond to the required services set forth in the Specifications hereunder.

d. Bidders must insert all figures as required and verify all computations for accuracy. The Port Authority in its sole judgment reserves the right to: (1) reject Bids without checking them for mathematical errors or omissions, (2) reject Bids that contain or appear to contain errors or omissions, and (3) supply corrections to Bids that contain or appear to contain mathematical errors and omissions, and in this case the Port Authority reserves the right to recompute the Total Estimated Contract Price based upon the Unit Prices inserted by the Bidder, which amount shall govern in all cases.

e. In the event that a Bidder quotes an amount in the Total Estimated column but omits to quote a Unit Price for that amount in the space provided, the Port Authority reserves the right to compute and insert the appropriate Unit Price.

f. The Total Estimated Contract Price is solely for the purpose of facilitating the comparisons of Bids. Compensation shall be in accordance with the section of this Contract entitled “Payment.”
### CONTRACTOR’S PRICING SHEET “A” - MONTHLY INSPECTION AND MAINTENANCE

<table>
<thead>
<tr>
<th>(A)</th>
<th>(B)</th>
<th>(C)</th>
<th>(D)</th>
<th>(E)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td><strong>SYSTEM DESCRIPTION</strong></td>
<td><strong>Unit Price</strong></td>
<td><strong>Three (3) Year Estimated Frequencies</strong></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Estimated Number of Units</td>
<td>(All-Inclusive Monthly Price*)</td>
<td></td>
</tr>
<tr>
<td>1</td>
<td>11</td>
<td>11 $</td>
<td>36 $</td>
<td>$</td>
</tr>
</tbody>
</table>

**Total Estimated Three (3) Year Contract Price for Monthly Inspection and Maintenance (Column (E))**

$\text{\textdollar} \quad \text{\textdollar}$

*The “All-Inclusive Monthly Price” in Column (C) above is all-inclusive of but is not limited to Contractor’s labor, materials for inspection and maintenance, overhead, including tolls, taxes required by law, cost of vehicle use and profit. No additional compensation will be provided for travel time, personal time, or material pick-up time.

Include on line (1) on the Pricing Summary Sheet “E”
## CONTRACTOR’S PRICING SHEET “B” – ANNUAL INSPECTION AND MAINTENANCE

<table>
<thead>
<tr>
<th>(A)</th>
<th>(B)</th>
<th>(C)</th>
<th>(D)</th>
<th>(E)</th>
</tr>
</thead>
<tbody>
<tr>
<td>SYSTEM DESCRIPTION</td>
<td>Estimated Number of Units</td>
<td>Unit Price (All-Inclusive Annual Price*)</td>
<td>Three (3) Year Estimated Frequencies</td>
<td>Estimated Three (3) Year Price</td>
</tr>
<tr>
<td>1</td>
<td>Annual Inspection and Maintenance of Building Management System</td>
<td>11</td>
<td>$</td>
<td>3</td>
</tr>
</tbody>
</table>

**Total Estimated Three (3) Year Contract Price for Annual Inspection and Maintenance (Column (E))**

$ 

*The “All-Inclusive Annual Price” in Column (C) above is all-inclusive of but is not limited to Contractor’s labor, materials for inspection and maintenance overhead, including tolls, taxes required by law, cost of vehicle use and profit. No additional compensation will be provided for travel time, personal time, or material pick-up time. Include on line (2) on the Pricing Summary Sheet “E”*
## CONTRACTOR'S PRICING SHEET “C”- EMERGENCY SERVICE LABOR

<table>
<thead>
<tr>
<th>Item</th>
<th>Labor Rate</th>
<th>Unit Price (All Inclusive Hourly Rate*)</th>
<th>Estimated Labor-Hours</th>
<th>Estimated Three (3) Year Price (B)x(C) = (D)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Regular Working Hours</td>
<td>$_________________</td>
<td>400</td>
<td>$_________________</td>
</tr>
<tr>
<td>2</td>
<td>Overtime Working Hours</td>
<td>$_________________</td>
<td>100</td>
<td>$_________________</td>
</tr>
<tr>
<td>3</td>
<td>Premium Overtime Working Hours</td>
<td>$_________________</td>
<td>100</td>
<td>$_________________</td>
</tr>
</tbody>
</table>

Total Estimated Three (3) Year Contract Price for Emergency Service Labor (Sum of Column (D) items 1-3 above) $__________

*The “All-Inclusive Hourly Rate” in Column (B) above is all-inclusive of but is not limited to Contractor’s labor, overhead, including tolls, taxes required by law, cost of vehicle use and profit. No additional compensation will be provided for travel time, personal time, or material pick-up time. Include on line (3) on the Pricing Summary Sheet “E”
## CONTRACTOR’S PRICING SHEET “D” – COMPENSATION FOR MATERIALS, PARTS AND EQUIPMENT

<table>
<thead>
<tr>
<th>ESTIMATED THREE (3) YEAR NET COST</th>
<th>CONTRACTOR’S PRECENTAGE MARK-UP/MARK-DOWN</th>
<th>ESTIMATED THREE (3) COST OF MATERIAL</th>
</tr>
</thead>
</table>

Bidder shall insert a percentage to be added/subtracted (Bidder shall circle the + or -) to the Net Cost of materials, parts and equipment. This % shall be firm for the duration of the Contract and any options and extension periods, if exercised.

\[
\text{Bidder Net Cost} \times \pm \text{percentage} = \text{Net Cost after adjustment} + $80,000 = \text{Total Cost after adjustment}^* 
\]

Include on line (4) on the Pricing Summary Sheet “E”

The estimated Net Cost includes labor, materials, parts and equipment. “Net Cost” means the Contractor’s actual cost after deducting all permitted cash and trade discounts, rebates, allowances, credits, sales taxes, commissions and refunds (whether or not any or all of the same shall have been taken by the Contractor) of all materials, supplies, tools and labor purchased or leased by the Contractor solely for use in performing Contractor’s obligations hereunder, provided such purchase or lease has received the prior written approval of the Manager. The documentation that the Contractor receives from its supplier that accompanies the material will substantiate these charges.
### PRICING SUMMARY SHEET “E”

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Total Estimated Three (3) Year Contract Price for Monthly Inspection and Maintenance (Sheet “A”)</td>
<td>$</td>
</tr>
<tr>
<td>2</td>
<td>Total Estimated Three (3) Year Contract Annual Inspection and Maintenance (Sheet “B”)</td>
<td>$</td>
</tr>
<tr>
<td>3</td>
<td>Total Estimated Three (3) Year Contract Price for Emergency Service Labor (Sheet “C”)</td>
<td>$</td>
</tr>
<tr>
<td>4</td>
<td>Estimated Three (3) Year Cost of Materials, Parts and Equipment (Sheet “D”)</td>
<td>$</td>
</tr>
<tr>
<td>5</td>
<td>ESTIMATED SWAC REIMBURSEMENT - Based on estimated cost to reimburse SWAC credentials that are actually issued to Contractor</td>
<td>$3,000.00</td>
</tr>
</tbody>
</table>

**TOTAL ESTIMATED THREE (3) YEAR CONTRACT PRICE**
(Total items (1) through (5) above) $
PART V – SPECIFICATIONS, TABLE OF CONTENTS

1. Specific Definitions ..................................................................................................... 2
2. Work Required by the Specifications .......................................................................... 3
3. Scheduling of Work ..................................................................................................... 5
4. Monthly Inspection & Maintenance ............................................................................ 6
5. Annual Inspection & Maintenance .............................................................................. 6
6. Emergency Service ...................................................................................................... 6
7. Personnel Requirements .............................................................................................. 7
8. Contractor’s Service Maintenance Form ..................................................................... 7
9. Vacating Work Site ..................................................................................................... 8
10. Debris Removal ......................................................................................................... 8
11. Secure Worker Access Consortium (SWAC) .......................................................... 8
12. Employee Uniforms and Appearance ...................................................................... 9
13. Replacement of Materials ....................................................................................... 9
14. Breakdown, Malfunction or Damage ..................................................................... 10
15. Recovering/Recycling/Reclaiming of Refrigerant ............................................... 10
16. Compensation for Materials ................................................................................... 10

PART V – SPECIFICATIONS

Part V-1

Revised 9/23/14
1. **Specific Definitions**

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

a. “Facility” means the Port Authority Trans Hudson’s Journal Square Transportation Center (JSTC) located at One PATH Plaza, Jersey City, NJ 07306.

b. “Emergency Service” means all labor, equipment, materials and service provided by the Contractor within four (4) hours of verbal notification from the Superintendent, on a twenty-four (24) hour, 7 days a week basis, including Holidays.

c. Building Management System (BMS) otherwise known as a building automation system (BAS), is a computer-based control system installed in buildings that controls and monitors the building's mechanical and electrical Equipment. The BMS is composed of the following: direct digital controls, pneumatic controls, all devices, and all equipment. It shall incorporate all items that monitor, adjust, and support the heating ventilation and air conditioning (HVAC) system and temperature adjustment for JSTC.

d. “Direct Digital Controls” (DDC) means a type of control system which is installed at JSTC. DDC incorporates the BMS Server, Network Automatic Engines (NAE), Network Control Engines (NCE) and all digital devices used to monitor HVAC Equipment.

e. “Devices” means all electric and pneumatic sensors (including but not limited to: humidity sensors, temperature sensors, enthalpy sensors and outdoor air sensors), switches (including but not limited to flow switches, relays, freezestats, high limit switches pressure, and differential pressure switches) all inputs to all Johnson Controls controllers (including but not limited to flow meters and status relays), all low voltage and communication wiring, low voltage transformers, and all output devices (including but not limited to valve actuators and damper actuators) associated with the Johnson Controls BMS. Devices shall be all electronic/electrical and pneumatic components needed to supervise, monitor, and adjust heating, cooling, and ventilation at JSTC.

f. “Equipment” means all air handling units, chillers, heat exchangers, pumps, variable frequency drives (VFD), fans, motors, compressors, variable air volume boxes (VAV’s), valves that are associated with Johnson Controls BMS. Equipment shall be all mechanical units controlled by the BMS.

g. “Manager” and “Superintendent” means the Manager of the Facility or his/her duly authorized representative overseeing this Contract.

h. “Routine Work” means all scheduled Work as outlined in Appendix A, “Maintenance Procedures (MP)” and Appendix B “Roster of Routines”. All Routine Work shall be scheduled during Regular Working Hours.

i. “Non-Routine Work” means Work required by the Superintendent or his/her designee that involves unscheduled repairs, such as Emergency Services.

j. “Regular Working Hours” means the hours between 7:30 a.m. and 4:00 p.m., Monday through Friday, exclusive of Holidays.

k. “Overtime Hours” means hours other than Regular Working Hours or Premium Overtime Hours and shall include the first eight (8) hours worked on Saturday.

l. “Premium Overtime Hours” means hours other than Regular Working Hours or
Overtime Hours and shall mean all hours in excess of eight (8) hours on Saturday and all day Sunday and Holidays.

m. “Technician” means an individual who is a competent and adequately trained HVAC technician qualified to perform the Work required hereunder and has thorough, formal industry training and certification, and at least five (5) years of extensive hands-on experience in the field of HVAC System maintenance and repair as specified in section of the Contract entitled “Personnel Requirements”.

2. **Work Required by the Specifications**

These Specifications relate generally to the performance of the inspection, maintenance, repair and Emergency Services for the Equipment and Devices associated with the Building Management System. The BMS Work specified herein is to be provided with monthly and annual inspections, maintenance, and repair services. The BMS is comprised of the BMS Server, Network Automatic Engine (NAE), various air conditioner units, various variable air volume (VAV) dampers, Network Control Engines (NCE), as listed below but not limited to the following and are linked together through the Watch Engineer’s Office. Service manuals and drawings for the BMS listed below are maintained at the Facility.

These Specifications require the performing of all services necessary, proper for or incidental to the Work referred to herein. In addition, all things not expressly mentioned in these Specifications but involved in carrying out their intent and in the complete and proper execution of the Work referred to herein are required by these Specifications, and the Contractor shall perform the same as though they were specifically delineated, described and mentioned.

<table>
<thead>
<tr>
<th>Network Controller</th>
<th>Location</th>
<th>Equipment</th>
</tr>
</thead>
<tbody>
<tr>
<td>BMS Server ADX01</td>
<td>PAPD COMM ROOM</td>
<td>System Server and Engine</td>
</tr>
<tr>
<td>NAE-1</td>
<td>10th FL COMM ROOM</td>
<td>11th FL AC UNITS (AC-1A thru 4A)</td>
</tr>
<tr>
<td>NAE-2</td>
<td>9th FL COMM ROOM</td>
<td>VAV’s FLRS 10 thru 7</td>
</tr>
<tr>
<td>NAE-3</td>
<td>6th FL COMM ROOM</td>
<td>VAV’s FLRS 6 thru 4</td>
</tr>
<tr>
<td>NAE-4</td>
<td>3rd FL COMM ROOM</td>
<td>VAV’s FLRS 3 thru 1</td>
</tr>
<tr>
<td>NAE-5</td>
<td>MER133</td>
<td>ALL HVAC IN MER133 (HV-4C, HV-5C, AC-4C, AC-5C, and Exhaust Fan’s)</td>
</tr>
<tr>
<td>NAE-6 (PANEL DDC-2, 4, 5, 6, 7, 8)</td>
<td>Police Command Electrical Closet</td>
<td>Existing N2 System which includes chillers, boilers, condenser pumps, cooling tower pumps, cooling tower fans, heat exchangers, emergency</td>
</tr>
<tr>
<td>NCE-1 (PANEL DDC-10)</td>
<td>BOILER ROOM</td>
<td>Chilled Water Pumps VFD, Condenser Water Pumps VFD, Cooling Tower Fans VFDs, and Isolation Valve’s, Exp. Tanks, HV-8C, HV-9C, SF-1C, Exhaust Fans, HV6C, HV-7C, AC-6C, P-12, and TekWorx Panel</td>
</tr>
<tr>
<td>----------------------</td>
<td>-------------</td>
<td>----------------------------------------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>NCE-2 (PANEL NCM2)</td>
<td>WATCH ENGINEERS</td>
<td>Existing Points, K9 Unit</td>
</tr>
<tr>
<td>NCE-3 (PANEL DDC-1)</td>
<td>MER 315</td>
<td>AC-8C, AC-1C, HV-1C, and Exhaust Fans</td>
</tr>
<tr>
<td>NCE-4 (PANEL DDC-3)</td>
<td>MER 236</td>
<td>MER236 HVAC (HV2C, HV3C, AC2C, and AC-3C)</td>
</tr>
<tr>
<td>NCE-5 (PANEL DDC-9)</td>
<td>MER R10</td>
<td>AC-9C &amp; Misc</td>
</tr>
</tbody>
</table>

The BMS incorporates older network panels (DDC 1 thru 9) and older Johnson Controls DX controllers (DX82, 81, 80, 20, 19, and 13) and is connected through the existing N2 network (NAE-6) as listed above. All Devices and Equipment with any network controller, old or recently installed, shall be a part of this Contract. The Equipment at JSTC also has pneumatic devices. Pneumatic devices are associated with AC-1A thru 4A, DX controllers, heat exchangers and valves, and emergency chillers and are to be managed and maintained under this Contract. Any pneumatic devices associated with the BMS shall be a part of this Contract’s monthly and annual routines.

At a minimum, inspection, maintenance and repair of Equipment shall be performed in accordance with all applicable Maintenance Procedures (“MP”) as described in Appendix A, which is attached hereto, as per manufacturers’ equipment maintenance manuals and in accordance with local and state codes for the BMS. The Contractor must keep the BMS in operating condition at all times, twenty-four (24) hours per day, seven (7) days per week, including Holidays. The Contractor shall perform the system inspection, maintenance and repair service during the months specified herein and shall supply, at the Contractor’s expense, all new incidental materials such as cleaning supplies, oils, greases and other lubricants during each scheduled service visit. The
Work is subject to a schedule determined in advance by the Contractor and approved by the Superintendent.

The Contractor shall replace any worn, failed, or nonfunctioning Devices and Equipment. Compensation for labor will be in accordance to the “Contractor’s Pricing Sheet “C” – “Emergency Service Labor”. Parts and/or components requiring replacement under this Contract shall be replaced with new materials, parts and/or components of the same type and/or manufacture and of current design, or equal, as approved by the Superintendent, unless otherwise agreed to or delineated by the Superintendent. All new parts and/or components shall be compatible with existing parts and/or components.

The operating life expectancy of all Devices shall be tracked as per MP-2 – item #7 checklist of Appendix A, “Replacement of Expendable Sensors”. Such items typically require replacement outside of the required monthly and annual maintenance. The Contractor is to review this checklist with the Superintendent, and only upon approval by the Superintendent, replace these components.

The Contractor shall be responsible for obtaining replacement parts for all systems herein whether standard or proprietary. Compensation shall be in accordance to “Contractor’s Pricing Sheet “D” – Compensation for Materials, Parts and Equipment and Contractor’s Pricing Sheet “C” – Emergency Service Labor.

3. Scheduling of Work
   a. Schedule of Maintenance
      Within thirty (30) days of Contract award, the Contractor shall submit a preventative maintenance schedule to the Superintendent for review and approval. The schedule shall cover a one (1) year time period to coincide with the time period over which point-to-point checkout and sensor / end device calibration verification shall be completed.

   b. Work Order Tracking System
      The existing automated Work Order Tracking System (“WOTS”) and MPs are a system of task assignment, reporting, ad control, the purpose of which is to instruct and then codify and report to the Superintendent the general and specific conditions encountered, the actions taken, and recommendations for subsequent activities. The schedule of task assignment will reflect the Routine Work required to be submitted under section (1) above.

      The WOTS is used to direct, audit and control the maintenance and repair of BMS at the site of Work. The principal components of the WOTS include the Roster of Routines for monthly and annual maintenance work orders and work orders for Non-Routine (unscheduled repair work and/or Emergency Services) Work, maintenance and repair records and MPs. MPs are used to establish the minimum Work required and as guides to the Contractor in its performance of its obligations contained hereunder. The WOTS generated work order must be completed and submitted to the Manager at the end of each Routine Work and a copy of the MP must accompany the invoice. Routine numbers are associated with the WOTS and
repeat on a monthly or annual basis depending on the type of routine. The routine number is separate from the work order number generated from the WOTS.

4. Monthly Inspection & Maintenance
The Contractor shall perform monthly inspection and maintenance services once per month, eleven (11) times per year except July. Monthly inspection and maintenance services shall be performed on all equipment and devices associated with BMS DX Server, NAE-1 thru 6, and NCE-1 thru 5. Compensation for monthly inspection and maintenance services shall be in accordance with the “All-Inclusive Monthly Price” inserted by the Contractor on Contractor’s Pricing Sheet “A” – Monthly Inspection and Maintenance.”

5. Annual Inspection & Maintenance
The Contractor shall perform annual inspection and maintenance services once per year during the month of July. Seasonal startup and annual inspection and maintenance shall be performed for all equipment and devices associated with BMS DX Server, NAE-1 thru 6, and NCE-1 thru 5. Compensation for annual inspection and maintenance services shall be in accordance with the “All-Inclusive Annual Price” inserted by the Contractor on “Contractor’s Pricing Sheet “B” - Annual Inspection and Maintenance.”

6. Emergency Service
The Contractor shall be available twenty-four (24) hours per day, seven (7) days per week (including Holidays) to provide Emergency Services on the BMS if required by the Superintendent. Emergency Services shall be requested by the Superintendent and performed by the Contractor as follows:

   a) Contractor’s service personnel shall respond to and begin performing Emergency Services on the site of said emergency within four (4) hours of verbal notification of the need for Emergency Services from the Superintendent.

   b) The Contractor shall provide the Superintendent with a response plan consisting of three (3) direct contacts, including names and telephone numbers, listed in order of priority, to ensure live contact can be made with at least one such individual when Emergency Services are needed. The Contractor must notify the Superintendent of any change to the response plan taking effect as far in advance as possible, but in no event shall such notification be more than thirty-six (36) hours after such change has taken effect.

The personnel provided by the Contractor to perform Emergency Services shall be sufficient in number and qualifications to investigate any and all equipment stoppages or malfunctions, and to perform promptly such repairs and/or adjustments which are necessary to restore the equipment to effective operating condition at the earliest possible time.

Compensation for Emergency Service shall be in accordance to “All Inclusive Charge Per
7. Personnel Requirements

The Contractor (and any subcontractor(s)) shall furnish competent and adequately trained personnel to perform the work required hereunder. Maintenance, Inspection and Repair services shall be from technicians, competently supervised, who shall be qualified to keep the BMS in a proper state of repair. If, in the opinion of the Superintendent, any employee so assigned is performing his/her functions unsatisfactorily, the Contractor shall take all steps necessary to assure that defective performance is remedied and that all services required are satisfactorily provided.

Technicians providing maintenance and repairs of the HVAC Systems under this Contract must possess a minimum of five (5) years previous technician experience maintaining and repairing BMS of similar type and complexity to those covered under this Contract.

Within ten (10) days of Contract award, the Contractor shall submit to PATH the names of employees who will perform maintenance and repair Work under this Contract. The Contractor will also provide proof of experience relating to HVAC work and submit this to the Superintendent for approval within ten (10) days of Contract award. No employee will be permitted to Work under this Contract without the approval of PATH.

Environmental Protection Agency (“EPA”) regulations (40 CFR Part 82, Subpart F) under Section 608 of the Clean Air Act require that technicians who maintain, service, repair, or dispose of equipment that could release ozone depleting refrigerants into the atmosphere must be certified. All personnel performing refrigerant maintenance and repair services must meet this requirement.

8. Contractor’s Service Maintenance Form

The Contractor shall utilize a generic preventative maintenance checklist that the Contractor has previously utilized in the performance of its trade for the first six (6) Monthly Inspection and Maintenance Routines it performs at JSTC under this Contract.

After the Contractor completes the first six (6) Monthly Inspection and Maintenance Routines at JSTC under this Contract, the Contractor shall submit site specific checklists for Maintenance Procedure 1 and Maintenance Procedure 2 as requested in Appendix A to the Superintendent for review and approval. These checklists shall be developed from existing as-built data; operation & maintenance data; set point data; time schedule data; site visits performed by the Contractor and any other data found at JSTC. This data shall be reviewed by the Contractor to determine the operational baseline requirements that will be used in the checklists.

All future site visits shall utilize the new site specific checklists. These checklists will be used by the Contractor when monthly or annual inspections are performed to verify the BMS is functioning as originally intended.

The Contractor’s employees shall report to the Superintendent at the start and completion of each service visit and said employee(s) shall keep the Superintendent informed of the Work performed by furnishing the Superintendent a completed Contractor’s Service Maintenance Form, the format shall include, in addition to any other pertinent data, the specific parts
and/or components which were inspected, replaced and/or repaired and the employee’s name(s). A completed copy of the Contractor’s Service Maintenance Form shall be attached to and submitted with each of the Contractor’s invoices. The Port Authority will compensate the Contractor only for the items listed on the Contractor’s Service Maintenance Form.

9. Vacating Work Site
Upon the expiration or earlier termination or revocation of this Contract, the Contractor shall remove its equipment, materials, supplies and other personal property from the site of the work. If the Contractor shall fail to remove his/her property on or before the expiration, termination or revocation of this Contract, PATH may remove such property to a public warehouse for deposit or retain the same in its own possession, and sell the same at public auction, the proceeds of which shall be applied first to any expenses of removal, storage and sale and second to any sums owed by the Contractor to PATH. If the expenses of such removal, storage and sale exceed the proceeds of sale, the Contractor shall pay such excess to PATH upon demand.

10. Debris Removal
The Contractor shall remove from the Facility all garbage, debris and all other waste material, whether solid or liquid, arising out of or in connection with its operations hereunder at no additional cost to PATH.

The Contractor shall exercise care in removing such material from the Facility. The manner of such removal shall be the subject in all respects to the continuing approval of PATH. No equipment or facilities of PATH shall be used in such removal. No such garbage, debris or other waste materials shall be permitted to be thrown, discharged or disposed into or upon the waters at or bounding JSTC. Under no circumstances shall any material derived while performing the required Work under this Contract as defined in the Specifications be stored or disposed of at or on the Facility. The Contractor will acquire title to all garbage, debris and other waste material at the time the same is loaded for removal. The Contractor must remove and dispose of all waste/debris in accordance with all state, federal, and local laws.

11. Secure Worker Access Consortium (SWAC)
As directed by the Superintendent, the Contractor is required to have certain of its staff, and any subcontractor’s staff, materialmen, visitors or others over whom the Contractor/subcontractor has control, who have access to certain areas or information, authorize the Authority and/or PATH or its designee to perform background checks and a personal identity verification check. As of January 29, 2007, the Secure Worker Access Consortium (S.W.A.C.) is the only Port Authority approved provider to be used.
to conduct background screening and personal identity verification, except as otherwise required by federal law and/or regulation (such as the Transportation Worker Identification Credential for personnel performing in secure areas at Maritime facilities). Information about S.W.A.C., instructions, corporate enrollment, online applications, and location of processing centers can be found at http://www.secureworker.com, or S.W.A.C. may be contacted directly at (877) 522-7922 for more information and the latest pricing. The cost for said background checks for staff that pass and are granted a credential may be reimbursable to the Contractor (and its subcontractors), if approved in advance by the Superintendent in writing. Staff that are rejected for a credential for any reason are never reimbursable.

12. Employee Uniforms and Appearance

Within ten (10) days of Contract award, the Contractor shall provide for its personnel all necessary distinctive uniforms with woven identification insignia of a type and style which shall be subject to the prior and continuing approval of the Superintendent. Employees without proper uniforms shall not be permitted to Work. The Contractor shall be responsible for ensuring that its employees are wearing proper shoes for the task being performed. The Superintendent shall have the right to require removal of any employee who shall fail to wear the proper uniform and/or shoes, and the exercise of this right shall not limit the obligations of the Contractor to perform the Work.

The Contractor shall establish a system of identification of the Contractor’s employees subject to the approval of the Superintendent. Each employee of the Contractor shall prominently display an identification badge that, at a minimum, shall contain the following information: the employee’s name, photograph, his/her signature and the Contractor’s company name. Updated photographic identifications must be issued with each and every Option or Extension Period of the Contract. Lost or stolen badges shall be immediately reported to the Superintendent.

13. Replacement of Materials

The Contractor shall arrange to have quick access to sufficient supply parts, materials, tools, and other equipment, as may be necessary to make replacements and repairs without delay. When it is necessary for the Contractor to replace any item of material during its performance under this Contract, the Contractor shall first submit to the Superintendent for his/her approval of the name of the item, the identifying number, if any, the quantity needed, and the name of the proposed item. The Superintendent shall have the option of (a) approving same; or (b) supplying said material itself provided it is of equal quality to that proposed by the Contractor.
14. Breakdown, Malfunction or Damage
The Contractor shall notify the Superintendent immediately upon the Contractor’s inspection or discovery of any damage or sign of disrepair to, mechanical breakdown or malfunction of, or crack or break in any item to be repaired hereunder.

15. Recovering/Recycling/Reclaiming of Refrigerant
The Contractor shall provide, within ten (10) business days after award of the Contract, a written plan, for the Superintendent’s approval, for the recovery, recycling and reclaiming of refrigerant.

16. Compensation for Materials, Parts and Equipment
Compensation for Materials, Parts and Equipment procured under this clause shall be the Net Cost the Contractor pays for such Materials and Equipment, plus the percentage mark-up mark-down as quoted on the “Contractor’s Pricing Sheets “D” – Compensation for Materials, Parts and Equipment” for the Estimated Three (3) Year Cost of Material and Equipment.

The Contractor shall obtain the written approval of the Manager prior to making any expenditures hereunder for any item of Materials pursuant to this clause.

Whenever any Work is performed (whether by the Contractor directly or through a subcontractor), the Contractor shall, at the completion of a Work Order, submit to the Manager:

(a) a memorandum showing the amount and character of the Materials furnished for such Work, from whom they were purchased and the amount to be paid therefor, and

(b) a memorandum of equipment used in the performance of such Work, showing the rental amount claimed therefor.

The memorandum of Materials and memorandum of Equipment are to be submitted by the Contractor to the Port Authority for the purpose of enabling the Manager to determine the amounts to be included for Materials and Equipment used in the performance of Work pursuant to a Work Order and to be paid by the Port Authority under this numbered clause. The failure of the Contractor to furnish (1) the memorandum of Materials, (2) the memorandum of Equipment, or (3) both memoranda with respect to any Work Order shall constitute a conclusive and binding determination on his part that the Contractor has waived all claims for payment for such Materials, Equipment, or both Materials and Equipment, as applicable.
APPENDIX A

MAINTENANCE PROCEDURES (MP)
**MONTHLY INSPECTION & MAINTENANCE OF DDC AND PNEUMATIC CONTROLS**

<table>
<thead>
<tr>
<th>Routine # 1 - 11</th>
<th>Work Order #</th>
<th>Routine # ________</th>
<th>Date ____________</th>
</tr>
</thead>
</table>

**Description of Work:**

Report to Superintendent upon arrival.

1. Validate the network connectivity of all BMS controllers, Operator workstations (desktop and laptop computers, servers), and network components such as repeaters, switches, hubs, etc. Investigate and remediate any issues found.

2. Review building time schedules (any daytime or night-time setback) and validate correct operation based on actual time of day and facility occupancy. Adjust time schedules as needed to reflect the actual occupancy patterns of the building.

3. The Contractor shall review the BMS alarm history and trend log files. Any problems noted from this review shall be investigated. The Contractor shall validate the correct reporting of alarms and verify that the correct codes and messages are being reported. Contractor to submit via email the history for the Superintendent to review.

4. Confirmation of sequences: The Contractor shall review the operation of BMS controlled equipment / systems and confirm that the functionality corresponds with the as-built sequences of operation. When equipment / systems does not operate as described in the sequences the Contractor shall review the associated programming, sensors, wiring, etc. and determine the cause. This shall include checking set points, temperatures, airflow, etc. to meet as built conditions.

5. Physically inspect all field panels and controllers for damage, excessive dirt or moisture and clean/vacuum as necessary.

6. BMS Investigation and Troubleshooting: The Contractor shall provide investigation and troubleshooting services for issues related to the BMS as required or as requested by the Superintendent at JSTC during this monthly site visit. The Contractor shall review Facility maintenance logs since the last visit to JSTC and determine if there are any operational issues which need to be checked. The Contractor shall determine the cause(s) of any problems found with the BMS and determine the repairs / modifications to the BMS that will be needed to correct these problems.
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<tr>
<td>7.</td>
<td>The Contractor shall confer with the Superintendent after reviewing the BMS Operator’s workstation graphics and trend logs to determine if any modifications are desired to the presentation of information. Minor changes to improve graphics and reports shall be implemented as needed.</td>
</tr>
<tr>
<td>8.</td>
<td>Install standard software updates as required</td>
</tr>
<tr>
<td>9.</td>
<td>Verify proper system restart, check system can be restarted and logged into.</td>
</tr>
<tr>
<td>10.</td>
<td>Check computer monitor for clarity, focus, and color.</td>
</tr>
<tr>
<td>11.</td>
<td>Clean-up work area and computer external area of dust at the end of shift.</td>
</tr>
</tbody>
</table>

Comments:
ANNUAL INSPECTION & MAINTENANCE OF DDC AND PNEUMATIC CONTROLS

Frequency: One time per year during the month of July

<table>
<thead>
<tr>
<th>Routine # 1-11</th>
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</table>

**Description of Work:**

- Report to Superintendent upon arrival.
- 1. Physically inspect all field panels and controllers for damage, excessive dirt or moisture and clean/vacuum as necessary.
- 2. Verify proper voltage at all control transformers.
- 3. Inspect all connections, wire raceways in panels and wire arrangements. Remove any abandoned devices and wiring and update panel diagrams as may be necessary to reflect current arrangements and configurations.
- 4. Verify condition of local battery / Uninterruptible Power Supply (UPS) that may be connected to the panel power Source if applicable.
- 5. Sensor, operator and end device point-to-point checkout. This checkout shall verify that each point indicated in the BMS is the actual physical point connected to the controller and the point is functioning properly. Any discrepancies shall be investigated and adjustments made as necessary so that all sensors monitored and Devices controlled by the BMS match the associated points indicated in the BMS and provide the desired functionality.
- 6. Sensor/ end Device calibration verification: The calibration of hardware points in the BMS shall be verified against actual field conditions throughout the life of this Contract. Where sensors, operators and other end devices are capable of being adjusted, the Contractor shall perform the calibration. Sensors shall be calibrated to within the accuracy range stated in the associated manufacturer’s manual. Operators and other end devices shall be adjusted so that the BMS output signal corresponds to operator’s or end device’s full control range. Where sensors, operators and other end Devices are not capable of being adjusted, the Contractor shall note the deviation between actual and measured value for sensors and between actual output function and commanded signal.
- 7. Replacement of expendable sensors: Parts for which product data indicates there is a defined operating life expectancy shall be tracked and replaced at the time intervals recommended by the manufacturer’s recommendations. For HVAC applications these will typically include humidity sensors, carbon monoxide sensors, carbon dioxide sensors, Uninterruptible Power Supply (UPS) batteries, etc... There are other specialty parts that can fall under this category.
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</tr>
</tbody>
</table>

Comments:
APPENDIX B

ROSTER OF ROUTINES
<table>
<thead>
<tr>
<th>Routine Number</th>
<th>EQUIP RECORD NUMBER</th>
<th>DESCRIPTION</th>
<th>AREA &amp; LOCATION</th>
<th>FREQUENCY &amp; MONTH</th>
<th>NOTES</th>
</tr>
</thead>
<tbody>
<tr>
<td>0001</td>
<td>NAE-1</td>
<td>MONTHLY INSPECTION &amp; MAINTENANCE OF DDC AND PNEUMATIC CONTROLS</td>
<td>10th FL COMM ROOM</td>
<td>ELEVEN (11) TIMES PER YEAR EXCEPT JULY</td>
<td>MP 1</td>
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<tr>
<td>0002</td>
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<td>NAE-6</td>
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<td>NCE-1</td>
<td>MONTHLY INSPECTION &amp; MAINTENANCE OF DDC AND PNEUMATIC CONTROLS</td>
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<td>ELEVEN (11) TIMES PER YEAR EXCEPT JULY</td>
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<td>NCE-2</td>
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<td>ELEVEN (11) TIMES PER YEAR EXCEPT JULY</td>
<td>MP 1</td>
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<td>EQUIP RECORD NUMBER</td>
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</tr>
</tbody>
</table>
STANDARD CONTRACT TERMS AND CONDITIONS

PART I   GENERAL DEFINITIONS ......................................................... 3

PART II   GENERAL PROVISIONS ......................................................... 4

1. Facility Rules and Regulations of PATH .................................................. 4
2. Contractor Not An Agent ......................................................................... 4
3. Contractor's Warranties ......................................................................... 4
4. Personal Non-Liability ........................................................................... 5
5. Non-Discrimination Requirements ......................................................... 6
6. Rights and Remedies of PATH .................................................................. 6
7. Rights and Remedies of the Contractor ................................................... 6
8. Submission To Jurisdiction ...................................................................... 7
9. Harmony ................................................................................................. 7
10. Claims of Third Persons ......................................................................... 8
11. No Third Party Rights ............................................................................ 8
12. Provisions of Law Deemed Inserted ....................................................... 8
13. Costs Assumed By The Contractor ......................................................... 8
14. Default, Revocation or Suspension of Contract ....................................... 8
15. Sales or Compensating Use Taxes .......................................................... 11
16. No Estoppel or Waiver ........................................................................... 11
17. Records and Reports ............................................................................. 11
18. General Obligations .............................................................................. 12
19. Assignments and Subcontracting ............................................................ 14
20. Indemnification and Risks Assumed By The Contractor ............................ 14
21. Approval of Methods ............................................................................ 15
22. Safety and Cleanliness .......................................................................... 15
23. Accident Reports ................................................................................... 16
24. Trash Removal ...................................................................................... 16
25. Lost and Found Property ....................................................................... 16
26. Property of the Contractor ..................................................................... 16
27. Modification of Contract ....................................................................... 16
28. Invalid Clauses ..................................................................................... 16
29. Approval of Materials, Supplies and Equipment ...................................... 16
30. Intellectual Property ............................................................................. 17
31. Contract Records and Documents – Passwords and Codes .................... 17
32. Designated Secure Areas ...................................................................... 18
33. Notification of Security Requirements ................................................... 18
34. Construction In Progress ...................................................................... 20
35. Permit-Required Confined Space Work .................................................. 20
36. Signs ..................................................................................................... 21
37. Vending Machines, Food Preparation ..................................................... 21
38. Confidential Information/Non-Publication ............................................. 21
39. Time is of the Essence ......................................................................... 22
40. Holidays ............................................................................................... 22
41. Personnel Standards ............................................................................. 22
42. General Uniform Requirements for Contractor’s Personnel .................... 22
43. Labor, Equipment and Materials Supplied by the Contractor .................. 22

Page 1 of 29

Standard Contract Terms and Conditions - PATH
Rev. 5/25/17 (PATH BIDS)
44. Contractor’s Vehicles – Parking - Licenses........................................................................................................ 23
45. Superintendent/Manager’s Authority .............................................................................................................. 23
46. Price Preference.................................................................................................................................................. 23
47. MBE/WBE Good Faith Participation .............................................................................................................. 24
48. Drugs and Alcohol Program ........................................................................................................................ 24

PART III CONTRACTOR’S INTEGRITY PROVISIONS .................................................................................. 24
1. Certification of No Investigation (criminal or civil anti-trust), Indictment, Conviction, Debarment, Suspension, Disqualification and Disclosure of Other Information ........................................ 24
2. Non-Collusive Bidding, and Code of Ethics Certification, Certification of No Solicitation Based On Commission, Percentage, Brokerage, Contingent or Other Fees........................................ 25
3. Bidder Eligibility for Award of Contracts - Determination by an Agency of the State of New York or New Jersey Concerning Eligibility to Receive Public Contracts.............................................. 27
4. Contractor Responsibility, Suspension of Work and Termination............................................................... 27
5. No Gifts, Gratuities, Offers of Employment, Etc. .......................................................................................... 27
6. Conflict of Interest ........................................................................................................................................... 28
7. Definitions ....................................................................................................................................................... 29
STANDARD CONTRACT TERMS AND CONDITIONS

PART I  GENERAL DEFINITIONS

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

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

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

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

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

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

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

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

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

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

Minority Business Enterprise (MBE) - means a business entity which is at least fifty-one percent (51%) owned and controlled by one or more members of one or more minority groups, or, in the case of a publicly held corporation, at least fifty-one percent (51%) of the stock of which is owned by one or more minority groups, and whose management and daily business operations are controlled by one or more such individuals who are citizens or permanent resident aliens.

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

(a) Black persons having origins in any of the Black African racial groups not of Hispanic origin;

(b) Hispanic persons of Mexican, Puerto Rican, Dominican, Cuban, Central or South American culture or origin, regardless of race;

(c) Asian and Pacific Islander persons having origins in any of the original peoples of the Far East, Southeast Asia, The Indian Subcontinent, or the Pacific Islands;

(d) Native American or Alaskan native persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification.
Site of the Work - or words of similar import shall mean the Facility and all buildings and properties associated therewith as described in this Contract.

Small Business Enterprise (SBE) - The criteria for a Small Business Enterprise are:
  o The principal place of business must be located in New York or New Jersey;
  o The firm must have been in business for at least three years with activity;
  o Average gross income limitations by industry as established by the Port Authority.

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

Woman-owned Business Enterprise (WBE) - shall mean a business enterprise which is at least fifty-one percent (51%) owned by one or more women, or, in the case of a publicly held corporation, at least fifty-one percent (51%) of the stock of which is owned by one or more women and whose management and daily business operations are controlled by one or more women who are citizens or permanent or resident aliens.

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

PART II   GENERAL PROVISIONS

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

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

3. Contractor's Warranties
   The Contractor represents and warrants:
   a. That it is financially solvent, that it is experienced in and competent to perform the requirements of this

Standard Contract Terms and Conditions - PATH

Rev. 5/25/17 (PATH BIDS)
Contract, that the facts stated or shown in any papers submitted or referred to in connection with the solicitation are true, and, if the Contractor be a corporation, that it is authorized to perform this Contract;

b. That it has carefully examined and analyzed the provisions and requirements of this Contract, and that from its own investigations it has satisfied itself as to the nature of all things needed for the performance of this Contract, the general and local conditions and all other matters which in any way affect this Contract or its performance, and that the time available to it for such examination, analysis, inspection and investigation was adequate;

c. That the Contract is feasible of performance in accordance with all its provisions and requirements and that it can and will perform it in strict accordance with such provisions and requirements;

d. That no Director, officer, agent or employee of PATH is personally interested directly or indirectly in this Contract or the compensation to be paid hereunder and that no Commissioner, officer, agent or employee of the Port Authority is personally interested directly or indirectly in this Contract or the compensation to be paid hereunder;

e. That, except only for those representations, statements or promises expressly contained in this Contract, no representation, statement or promise, oral or in writing, of any kind whatsoever by the Port Authority, PATH, their Directors, Commissioners, officers, agents, employees or consultants has induced the Contractor to enter into this Contract or has been relied upon by the Contractor, including any with reference to: (1) the meaning, correctness, suitability, or completeness of any provisions or requirements of this Contract; (2) the nature, quantity, quality or size of the materials, equipment, labor and other facilities needed for the performance of this Contract; (3) the general or local conditions which may in any way affect this Contract or its performance; (4) the price of the Contract; or (5) any other matters, whether similar to or different from those referred to in (1) through (4) immediately above, affecting or having any connection with this Contract, the bidding thereon, any discussions thereof, the performance thereof or those employed therein or connected or concerned therewith.

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

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

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

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

4. Personal Non-Liability

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

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

A. 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.

B. Contractor agrees that these “Non-Discrimination Requirements” are a binding part of this Contract. Without limiting the generality of any other term or provision of this Contract, in the event the Authority, or a state or federal agency finds that the Contractor or any of its subcontractors or vendors has not complied with these “Non-Discrimination Requirements”, the Authority may cancel, terminate or suspend this Contract in accordance with Section 14 of these Standard Terms and Conditions entitled “Default, Revocation, or Suspension of Contract.”

C. Contractor 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.”

6. Rights and Remedies of PATH

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

a. The right to take over and complete the Work or any part thereof as agent for and at the expense of the Contractor, either directly or through others.

b. The right to cancel this Contract as to any or all of the Work yet to be performed.

c. The right to specific performance, an injunction or any appropriate equitable remedy.

d. The right to money damages.

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

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

7. Rights and Remedies of the Contractor

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

8. Submission To Jurisdiction

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

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

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

9. Harmony

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

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

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

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

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

11. No Third Party Rights

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

12. Provisions of Law Deemed Inserted

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

13. Costs Assumed By The Contractor

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

14. Default, Revocation or Suspension of Contract

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

1. If fire or other cause shall destroy all or a substantial part of the Facility.

2. If any governmental agency shall condemn or take a temporary or permanent interest in all or a substantial part of the Facility, or all of a part of PATH’s interest herein;

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

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

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

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

2. By order or decree of a court the Contractor shall be adjudged bankrupt or an order shall be
made approving a petition filed by any of the creditors, or, if the Contractor is a corporation, by any of the stockholders of the Contractor, seeking its reorganization or the readjustment of its indebtedness under the federal bankruptcy laws or under any law or statute of the United States or of any State thereof; or

3. A petition under any part of the federal bankruptcy laws or an action under any present or future insolvency law or statute shall be filed against the Contractor and shall not be dismissed within thirty (30) days after the filing thereof; or

4. The interest of the Contractor under this Contract shall be transferred to, passed to or devolve upon, by operation of law or otherwise, any other person, firm or corporation, or

5. The Contractor, if a corporation, shall, without the prior written approval of the Port Authority, become a surviving or merged corporation in a merger, a constituent corporation in a consolidation, or a corporation in dissolution; or

6. If the Contractor is a partnership, and the said partnership shall be dissolved as the result of any act or omission of its copartners or any of them, or by operation of law or the order or decree of any court having jurisdiction, or for any other reason whatsoever; or

7. By or pursuant to, or under authority of any legislative act, resolution or rule, or any order or decree of any court or governmental board, agency or officer having jurisdiction, a receiver, trustee, or liquidator shall take possession or control of all or substantially all of the property of the Contractor and such possession or control of all or substantially all of the property of the Contractor and shall continue in effect for a period of fifteen (15) days;

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

c. If any of the following shall occur:

1. The Contractor shall cease, abandon any part of the service, desert, stop or discontinue its services in the premises for any reason whatsoever and regardless of the fault of the Contractor; or

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

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

d. If any of the events enumerated in this Section shall occur prior to commencement date of this Contract PATH upon the occurrence of any such event or any time thereafter during the continuance thereof by twenty-four (24) hours notice may terminate or suspend this Contract and the rights of the Contractor hereunder, such termination or suspension to be effective upon the date specified in such notice.
e. No payment by PATH of any monies to the Contractor for any period or periods after default of any of the terms, covenants or conditions hereof to be performed, kept and observed by the Contractor and no act or thing done or omitted to be done by PATH shall be deemed to be a waiver of the right of PATH to terminate this Contract or of any other right or remedies to which PATH may be entitled because of any breach thereof. No waiver by PATH of any default on the part of the Contractor in the performance of any of the terms, covenants and conditions hereof to be performed, kept or observed by the Contractor shall be or be construed to be a waiver by PATH of any other subsequent default in the performance of any of the said terms, covenants and conditions.

f. In addition to all other rights of revocation or termination hereunder and notwithstanding any other provision of this Contract PATH may terminate this Contract and the rights of the Contractor hereunder without cause at any time upon five (5) days written notice to the Contractor and in such event this Contract shall cease and expire on the date set forth in the notice of termination as fully and completely as though such dates were the original expiration date hereof and if such effective date of termination is other than the last day of the month, the amount of the compensation due to the Contractor from PATH shall be prorated when applicable on a daily basis. Such cancellation shall be without prejudice to the rights and obligations of the parties arising out of portions already performed but no allowance shall be made for anticipated profits.

g. Any right of termination contained in this paragraph, shall be in addition to and not in lieu of any and all rights and remedies that PATH shall have at law or in equity consequent upon the Contractor's breach of this Contract and shall be without prejudice to any and all such other rights and remedies. It is hereby specifically agreed and understood that the exercise by the Port Authority of any right of termination set forth in this paragraph shall not be or be deemed to be an exercise by the Port Authority of an election of remedies so as to preclude PATH from any right to money damages it may have for the period prior to the effective date of termination to the original expiration date of the Contract, and this provision shall be deemed to survive the termination of this Contract as aforesaid.

h. If (1) the Contractor fails to perform any of its obligations under this Contract or any other agreement between PATH or the Port Authority and the Contractor (including its obligation to PATH or the Port Authority to pay any claim lawfully made against it by any supplier, subcontractor or worker or other person which arises out of or in connection with the performance of this Contract or any other agreement with PATH or the Port Authority) or (2) any claim (just or unjust) which arises out of or in connection with this Contract or any other agreement between PATH or the Port Authority and the Contractor is made against the Port Authority or PATH or (3) any subcontractor under this Contract or any other agreement between PATH or the Port Authority and the Contractor fails to pay any claims lawfully made against it by any supplier, subcontractor, worker or other third person which arises out of or in connection with this Contract or any other agreement between PATH or the Port Authority and the Contractor or if in the opinion of PATH or the Port Authority any of the aforesaid contingencies is likely to arise, then the Port Authority or PATH, as applicable, shall have the right, in its discretion, to withhold out of any payment (final or otherwise) such sums as PATH may deem ample to protect it against delay or loss or to assure the payment of just claims of third persons, and to apply such sums in such manner as PATH may deem proper to secure such protection or satisfy such claims. All sums so applied shall be deducted from the Contractor's compensation. Omission by PATH to withhold out of any payment, final or otherwise, a sum for any of the above contingencies, even though such contingency has occurred at the time of such payment, shall not be deemed to indicate that PATH does not intend to exercise its right with respect to such contingency. Neither the above provisions for rights of PATH to withhold and apply monies nor any exercise or attempted exercise of, or omission to exercise, such rights by PATH shall create any obligation of any kind to such supplier, subcontractors, worker or other third persons. If, however, the payment of any amount due the Contractor shall be improperly delayed, PATH shall pay the Contractor interest thereon at the rate of 6% per annum for the period of the delay, it being agreed that such interest shall be in lieu of and in liquidation of any damages to the Contractor because of such delay.
i. If PATH has paid any sum or has incurred any obligation or expense which the Contractor has agreed to pay or reimburse PATH, or if PATH is required or elects to pay any sum or sums or incurs any obligations or expense by reason of the failure, neglect or refusal of the Contractor to perform or fulfill any one or more of the conditions, covenants, or agreements contained in this Contract, or as a result of an act of omission of the Contractor contrary to the said conditions, covenants and agreements, the Contractor shall pay to PATH the sum or sums so paid or expense so incurred, including all interests, costs and damages, promptly upon the receipt of PATH’s statement therefore. PATH may, however, in its discretion, elect to deduct said sum or sums from any payment payable by it to the Contractor.

j. If PATH pays any installment to the Contractor without reducing said installment as provided in this Contract, it may reduce any succeeding installment by the proper amount, or it may bill the Contractor for the amount by which the installment paid should have been reduced and the Contractor shall pay to PATH any such amount promptly upon receipt of PATH's statement therefore.

k. PATH shall also have the rights set forth above in the event the Contractor shall become insolvent or bankrupt or if his affairs are placed in the hands of a receiver, trustee or assignee for the benefit of creditors.

15. Sales or Compensating Use Taxes

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

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

16. No Estoppel or Waiver

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

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

17. Records and Reports

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

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

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

a. The Contractor hereby further agrees to furnish to PATH from time to time such written reports in connection with its operations hereunder as PATH may deem necessary or desirable. The format of all forms, schedules and reports furnished by the Contractor to PATH shall be subject to the continuing approval of PATH.

b. No provision in this Contract giving PATH a right of access to records and documents is intended to impair or affect any right of access to records and documents which they would have in the absence of such provision. Additional record keeping may be required under other sections of this Contract.

18. General Obligations

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

b. The Contractor shall comply with the provisions of all present and future federal, state and municipal laws, rules, regulations, requirements, ordinances, orders and directions which pertain to its operations under this Contract and which affect the Contract or the performance thereof and those engaged therein as if the said Contract were being performed for a private corporation, except where stricter requirements are contained in the Contract in which case the Contract shall control. The Contractor
shall procure for itself all licenses, certificates, permits or other authorization from all governmental authorities, if any, having jurisdiction over the Contractor's operations hereunder which may be necessary for the Contractor's operations. The Contractor's obligation to comply with governmental requirements is not to be construed as a submission by PATH or the Port Authority to the application to itself of such requirements.

c. The Contractor shall pay all taxes, license, certification, permit and examination fees and excises which may be assessed on its property or operations hereunder or income therefrom, and shall make all applications, reports and returns required in connection therewith.

d. The Contractor shall, in conducting its operations hereunder, take all necessary precautions to protect the general environment and to prevent environmental pollution, contamination, damage to property and personal injury. In the event the Contractor encounters material reasonably believed to be asbestos, polychlorinated biphenyl (PCB) or any other hazardous material, in conducting its operations hereunder, the Contractor shall immediately stop Work in the area affected and report the condition in writing to the Superintendent/Manager. Work in the affected area shall not thereafter be resumed by the Contractor except upon the issuance of a written order to that effect from the Superintendent/Manager.

e. The Contractor shall promptly observe, comply with and execute the provisions of any and all present and future rules and regulations, requirements, standard orders and directions of the American Insurance Association, the Insurance Services Office, National Fire Protection Association, and any other body or organization exercising similar functions which may pertain or apply to the Contractor's operations hereunder.

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

1. will invalidate or be in conflict with any fire insurance policies covering the Facility or any part thereof or upon the contents of any building thereon; or

2. will increase the rate of any fire insurance, extended coverage or rental insurance on the Facility or any part thereof or upon the contents of any building thereon; or

3. in the opinion of PATH will constitute a hazardous condition, so as to increase the risk normally attendant upon the operations contemplated by this Contract; or

4. may cause or produce in the premises, or upon the Facility any unusual, noxious or objectionable smoke, gases, vapors, odors; or

5. may interfere with the effectiveness or accessibility of the drainage and sewerage system, fire protection system, sprinkler system, alarm system, fire hydrants and hoses, if any, installed or located or to be installed or located in or on the Facility; or

6. shall constitute a nuisance in or on the Facility or which may result in the creation, commission or maintenance of a nuisance in or on the Facility.

f. If by reason of the Contractor's failure to comply with the provisions of this Section and provided PATH has given the Contractor five (5) days written notice of its failure and the Contractor shall not have cured said failure within said five (5) days, any fire insurance, extended coverage or rental insurance rate on the Facility or any part thereof or upon the contents of any building thereon shall at any time be higher than it otherwise would be, then the Contractor shall on demand pay PATH that part of all fire insurance, extended coverage or rental insurance premiums paid or payable by PATH which shall have been charged because of such violations by the Contractor.

g. The Contractor shall conduct its operations hereunder so as not to endanger, unreasonably interfere with, or delay the operations or activities of any tenants or occupants on the premises or the Facility and, moreover, shall use the same degree of care in performance on the premises as would be required by law of PATH and shall conduct operations hereunder in a courteous, efficient and safe manner.

h. The Contractor shall provide such equipment and medical facilities as may be necessary to supply first
aid service in case of accidents to its personnel who may be injured in the furnishing of service hereunder. The Contractor shall maintain standing arrangements for the removal and hospital treatment of any of its personnel who may be injured.

19. Assignments and Subcontracting

a. The Contractor shall not sell, transfer, mortgage, pledge, subcontract or assign this Contract or any part thereof or any of the rights granted hereunder or any moneys due or to become due to it hereunder or enter into any contract requiring or permitting the doing of anything hereunder by an independent Contractor, without the prior written approval of PATH, and any such sale, transfer, mortgage, pledge, subcontract, assignment or contract without such prior written approval shall be void as to PATH.

b. All subcontractors who provide permanent personnel to the Contractor for work under this Contract shall be given written notice to comply with all requirements of the Contract. The Contractor shall be responsible and liable for the performance and acts of each subcontractor.

c. All persons to whom the Contractor sublets services shall be deemed to be its agents and no subletting or approval thereof shall be deemed to release this Contractor from its obligations under this Contract or to impose any obligations on PATH to such subcontractor or to give the subcontractor any rights against PATH.

20. Indemnification and Risks Assumed By The Contractor

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

The Contractor assumes the following risks, whether such risks arise out of or are in any way connected to the Contractor’s operations or to its performance of work under this Contract, or arise out of acts or omissions (negligent or not) of the Contractor, PATH, the Port Authority or third persons (including agents, servants, officers, representatives, Commissioners, Directors and employees of PATH, the Port Authority and the Contractor) or from any other cause, excepting only risks occasioned solely by affirmative willful acts of PATH or the Port Authority done subsequent to the opening of proposals on this Contract, and shall to the extent permitted by law indemnify PATH and the Port Authority for all loss or damage incurred in connection with such risks:

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

b. The risk of any and all loss or damage of the Contractor's property, equipment (including but not limited to automotive and/or mobile equipment) materials and possessions on the Facility.

c. The risk of claims, whether made against the Contractor, the Port Authority, or PATH, for any and all loss or damages occurring to any property, equipment (including but not limited to automotive and/or mobile equipment), materials and possessions of the Contractor's agents, employees, materialmen and others performing work hereunder.

d. The risk of claims for injuries, damage or loss of any kind whether just or unjust made by or on behalf of third persons (including agents, servants, officers, representatives, Commissioners, Directors and employees of PATH, the Port Authority and the Contractor) arising or alleged to arise out of or in connection with the Contractor’s operations or its performance of work hereunder, whether such claims are made against the Contractor, the Port Authority or PATH.

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

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

21. Approval of Methods

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

22. Safety and Cleanliness

a. The Contractor shall, in the furnishing of services hereunder, exercise every precaution to prevent injury to person or damage to property or environmental impairment and avoid inconvenience to the occupants of or any visitors to the Facility. The Contractor shall, without limiting the generality hereof, place such personnel, erect such barricades and railings, give such warnings, display such lights, signals or signs, place such cones and exercise precautions as may be necessary, proper or desirable.

b. The Contractor shall in case of unsafe floor conditions due to construction, wetness, spillage, sickness and all other types of hazardous conditions proceed to rope off the unsafe area and place appropriate warnings signs to prevent accidents from occurring. The Contractor shall clean said area to the satisfaction of the Superintendent/Manager.

c. The Contractor shall at all times maintain in a clean and orderly condition and appearance any and all facilities provided by PATH for the Contractor's operations, and all fixtures, sink closets, equipment, and other personal property of PATH which are located in said facilities.
23. Accident Reports

The Contractor shall promptly report in writing to the Manager of the Facility and to the Deputy Chief, Litigation Management of the Port Authority all accidents whatsoever arising out of or in connection with its operations hereunder and which result in death or injury to persons or damage to property, setting forth such details thereof as PATH may desire. In addition, if death or serious injury or serious damage is caused, such accidents shall be immediately reported by telephone to the aforesaid representatives of PATH (or the Port Authority, as applicable).

24. Trash Removal

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

25. Lost and Found Property

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

26. Property of the Contractor

a. All property of the Contractor at the Site by virtue of this Contract shall be removed on or before the expiration or sooner termination or revocation of this Contract.

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

27. Modification of Contract

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

28. Invalid Clauses

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

29. Approval of Materials, Supplies and Equipment

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

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

30. Intellectual Property

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

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

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

31. Contract Records and Documents – Passwords and Codes

When the performance of the contract services requires the Contractor to produce, compile or maintain records, data, drawings, or documents of any kind, regardless of the media utilized, then all such records, drawings, data and documents which are produced, prepared or compiled in connection with this contract, shall become the property of PATH (or the Port Authority as applicable), and PATH (or the Port Authority as applicable) shall have the right to use or permit the use of them and any ideas or methods represented by them for any purpose and at any time without other compensation than that specifically provided herein.

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

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

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

33. Notification of Security Requirements

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

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

- **Execution of Port Authority Approved Non-Disclosure Confidentiality Agreements**
  
  At the direction of the Port Authority, the Contractor shall be required to have its principals, staff and/or subcontractor(s) and their staff, execute Port Authority approved non-disclosure and confidentiality agreements.

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

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

  As of January 29, 2007, the Secure Worker Access Consortium (S.W.A.C.) is the only Port Authority approved provider to be used to conduct background screening and personal identity verification, except as otherwise required by federal law and/or regulation (such as Security Identification Display Area (SIDA), the federal regulatory requirements for personnel performing Work at aviation facilities and such as the Transportation Worker Identification Credential for personnel performing in secure areas at Maritime
facilities). Information about S.W.A.C., instructions, corporate enrollment, online applications, and location of processing centers can be found at http://www.secureworker.com, or S.W.A.C. may be contacted directly at (877) 522-7922 for more information and the latest pricing. The cost for said background checks for staff that pass and are granted a credential shall be reimbursable to the Contractor (and its subcontractors) as an out-of-pocket expense as provided herein. Staff that are rejected for a credential for any reason are not reimbursable.

- **Issuance of Photo Identification Credential**

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

  Employees may be required to produce not less than two forms of valid/current government issued identification having an official photograph and an original, 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 identification verification for all employees of the Contractor and subcontractors shall be completed prior to being provided a S.W.A.C. ID Photo Identification credential.

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

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

- **Compliance with the Port Authority Information Security Handbook**

  The Contract may require access to Port Authority or PATH information considered Protected Information (“PI”) as defined in the Port Authority Information Security Handbook (“Handbook”), dated October, 2008, corrected as of November 14, 2013, and as may be further amended. The Handbook and its requirements are hereby incorporated into this agreement and will govern the possession, distribution and use of PI if at any point during the lifecycle of the project or solicitation it becomes necessary for the Contractor to have access to PI. Protecting sensitive information requires the application of uniform safeguarding measures to prevent unauthorized disclosure and to control any authorized disclosure of this information within the Port Authority or when released by the Port Authority to outside entities. The following is an outline of some of the procedures, obligations and directives contained in the Handbook:
require that the Contractor and subcontractors, when appropriate, sign Non-Disclosure and Confidentiality Agreements (NDAs), or an Acknowledgment of an existing NDA, provided by the Authority as a condition of being granted access to Protected Information categorized and protected as per the Handbook;

(2) require that individuals needing access to PI be required to undergo a background check, pursuant to the process and requirements noted in § 3.2 of the Information Security Handbook.

(3) require Contractors and commercial enterprises to attend training to ensure security awareness regarding Port Authority and PATH information;

(4) specific guidelines and requirements for the handling of PI to ensure that the storage and protection of PI;

(5) restrictions on the transfer, shipping, and mailing of PI;

(6) prohibitions on the publication, posting, modifying, copying, reproducing, republishing, uploading, transmitting, or distributing PI on websites or web pages. This may also include restricting persons, who either have not passed a pre-screening background check, or who have not been granted access to PI, from viewing such information;

(7) require that PI be destroyed using certain methods, measures or technology pursuant to the requirements set forth in the Handbook;

(8) require the Contractor to mandate that each of its subcontractors maintain the same levels of security required of the Contractor under any Port Authority or PATH awarded contract.

(9) prohibit the publication, exchange or dissemination of PI developed from the project or contained in reports, except between Contractors and subcontractors, on a need to know basis, without prior approval of the Port Authority;

(10) require that PI only be reproduced or copied pursuant to the requirements set forth in the Handbook.

• Audits for Compliance with Security Requirements

The Port Authority and/or PATH may conduct random or scheduled examinations of business practices under this section entitled “NOTIFICATION OF SECURITY REQUIREMENTS” and the Handbook in order to assess the extent of compliance with security requirements, Protected Information procedures, protocols and practices, which may include, but not be limited to, verification of background check status, confirmation of completion of specified training, and/or a site visit to view material storage locations and protocols.

34. Construction In Progress

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

35. Permit-Required Confined Space Work

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

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

36. Signs

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

37. Vending Machines, Food Preparation

38. Confidential Information/Non-Publication

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

b. Protected Information shall mean and include collectively, as per The Port Authority of New York & New Jersey Information Security Handbook (October 15, 2008, corrected as of November 14, 2013), 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 Contractor shall hold all such Protected Information in trust and confidence for the Authority, and agrees that the Contractor and the personnel provided by the Contractor hereunder shall not, during or after the termination or expiration of this Contract, disclose to any person, firm or corporation, nor use for its own business or benefit, any information obtained by it under or in connection with the supplying of services contemplated by this Contract. The Contractor and the personnel provided by the Contractor hereunder shall not violate in any manner any patent, copyright, trade secret or other proprietary right of the Authority or third persons in connection with their services hereunder, either before or after termination or expiration of this Contract. The Contractor and the personnel provided by the Contractor hereunder shall not willfully or otherwise perform any dishonest or fraudulent acts, breach any security procedures, or damage or destroy any hardware, software or documentation, proprietary or otherwise, in connection with their services hereunder. The Contractor shall promptly and fully inform the Director/General Manager in writing of any patent, copyright, trade secret or other intellectual property rights or disputes, whether existing or potential, of which the Contractor has knowledge, relating to any idea, design, method, material, equipment or other matter related to this Contract or coming to the Contractor’s attention in connection with this Contract.

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

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

40. **Holidays**

The following holidays will be observed at the Site:

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

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

41. **Personnel Standards**

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

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

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

42. **General Uniform Requirements for Contractor’s Personnel**

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

43. **Labor, Equipment and Materials Supplied by the Contractor**

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

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

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

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

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

44. Contractor’s Vehicles – Parking - Licenses

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

45. Superintendent/Manager’s Authority

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

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

46. Price Preference

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

a. Services, a price preference of 5% is available for New York or New Jersey Small Business Enterprises (SBE); or
b. Services (excluding Janitorial/Cleaning Services), a price preference of 10% is available for New York or New Jersey Minority or Women Business Enterprises (MBE/WBE), certified by the Port Authority by the day before the bid opening.

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

47. MBE/WBE Good Faith Participation

The Contractor shall use every good-faith effort to provide for participation by Port Authority certified Minority Business Enterprises (MBEs) and Port Authority certified Woman-owned Business Enterprises (WBEs) in all purchasing and subcontracting opportunities associated with this Contract, including purchase of equipment, supplies and labor services. If this Contract contains participation goals, the Contractor shall use good faith efforts to achieve the goals.

Good faith efforts to include participation by Port Authority certified MBE/WBEs shall include, but not be limited to the following:

A. Dividing the services and materials to be procured into small portions, where feasible.
B. Giving reasonable advance notice of specific contracting, subcontracting and purchasing opportunities to such MBE/WBEs as may be appropriate.
C. Soliciting services and materials from a Port Authority certified MBE/WBE or seeking MBE/WBEs from other sources. To access the Port Authority’s Directory of MBE/WBE Certified Firms go to www.panynj.gov/supplierdiversity
D. Ensuring that provision is made to provide progress payments to MBE/WBEs on a timely basis.
E. Observance of reasonable commercial standards of fair dealing in the respective trade or business.

48. Drugs and Alcohol Program

Effective June 12, 2017 (the “Effective Date,”) the Contractor and its subcontractors which perform regulated services (as defined in 49 CFR Part 219) for PATH, are responsible for its/their compliance with the Federal Railroad Administration (“FRA”) 49 CFR 219 "Control of Alcohol and Drug Use" (“Part 219.”) For the purposes of compliance, the Contractor and its subcontractors shall not be included in the Port Authority or PATH Part 219 Compliance Program and must therefore comply as otherwise set forth in Part 219. In order to perform Work covered by Part 219 after the Effective Date, Contractor and its subcontractors shall submit to PATH a written certification that the Contractor and its subcontractors are in compliance with all applicable parts of Part 219. This certification and any other documentation required by PATH or Part 219 must be provided prior to performing Work covered by Part 219 under the Contract and at least every six (6) months during the duration of the Contract, or at any other frequency determined by PATH or required by the FRA.

The Contractor’s, or its subcontractors’, failure to comply with any provision of this numbered clause may be deemed as a substantial breach of this Contract.

PART III CONTRACTOR’S INTEGRITY PROVISIONS

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

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

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

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

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

e. had any business or professional license suspended or revoked or, within the five years prior to bid opening, had any sanction imposed in excess of fifty thousand dollars ($50,000) as a result of any judicial or administrative proceeding with respect to any license held or with respect to any violation of a federal, state or local environmental law, rule or regulation;

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

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

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

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

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

b. the prices quoted in its bid have not been and will not be knowingly disclosed directly or indirectly by the Bidder prior to the official opening of such bid to any other bidder or to any competitor;

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

d. this organization has not made any offers or agreements or taken any other action with respect to any Authority employee or former employee or immediate family member of either which would constitute a breach of ethical standards under the Code of Ethics dated 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 Bidder for the purpose of securing business, has been employed or retained by the Bidder to solicit or secure this Contract on the understanding that a commission, percentage, brokerage, contingent, or other fee would be paid to such person or selling agency; and
f. The Bidder has not offered, promised or given, demanded or accepted, any undue advantage, directly or indirectly, to or from a public official or employee, political candidate, party or party official, or any private sector employee (including a person who directs or works for a private sector enterprise in any capacity), in order to obtain, retain, or direct business or to secure any other improper advantage in connection with this Contract.

g. No person or organization has been retained, employed or designated on behalf of the Bidder to impact any Port Authority determination with respect to (i) the solicitation, evaluation or award of this Contract, or (ii) the preparation of specifications or request for submissions in connection with this Contract.

The foregoing certifications in this Part III, Sections 1 and 2, shall be deemed to have been made by the Bidder as follows:

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

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

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

In any case where the Bidder cannot make the foregoing certifications, the Bidder shall so state and shall furnish with the signed bid a signed statement which sets forth in detail the reasons therefor. If the Bidder is uncertain as to whether it can make the foregoing certifications, it shall so indicate in a signed statement furnished with its bid, setting forth in such statement the reasons for its uncertainty. With respect to the foregoing certification in paragraph “2g”, if the Bidder cannot make the certification, it shall provide, in writing, with the signed bid: (i) a list of the name(s), address(es), telephone number(s), and place(s) of principal employment of each such individual or organization; and (ii) a statement as to whether such individual or organization has a “financial interest” in this Contract, as described in the Procurement Disclosure policy of the Authority (a copy of which is available upon request to the Chief Procurement Officer of the Procurement Department of the Authority). Such disclosure is to be updated, as necessary, up to the time of award of this Contract. As a result of such disclosure, the Port Authority shall take appropriate action up to and including a finding of non-responsibility.

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

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

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

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

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

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

4. Contractor Responsibility, Suspension of Work and Termination

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

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

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


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

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

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

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

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

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

6. Conflict of Interest

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

7. Definitions

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

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

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

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

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

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

If the solicitation is a Request for Proposal:

- **Bid** - shall mean Proposal;
- **Bidder** - shall mean Proposer;
- **Bidding** - shall mean submitting a Proposal.

In a Contract resulting from the taking of bids:

- **Bid** - shall mean bid;
- **Bidder** - shall mean Bidder; except and until the Contract has been awarded, then it shall mean Contractor
- **Bidding** - shall mean executing this Contract.

In a Contract resulting from the taking of Proposals:

- **Bid** - shall mean Proposal;
- **Bidder** - shall mean Proposer;
- **Bidding** - shall mean executing this Contract.