

THE PORT AUTHORITY OF NY & NJ
PROCUREMENT DEPARTMENT
ATTN: BID/PROPOSAL CUSTODIAN
TWO MONTGOMERY STREET, 3RD FLOOR
JERSEY CITY, NEW JERSEY 07302

REQUEST FOR PROPOSALS

ISSUE DATE: JULY 18, 2013

**TITLE: REQUEST FOR PROPOSALS FOR COGNOS BUSINESS
INTELLIGENCE & PLANNING DEVELOPMENT & SUPPORT
SERVICES CALL-IN PROGRAM DURING 2014-2016**

RFP NO. 34203:

**SUBMIT PROPOSALS NO LATER THAN THE DUE DATE AND TIME
TO THE ABOVE ADDRESS**

PRE-PROPOSAL MEETINGS: JULY 31, 2013 TIME: 10:00A.M.

QUESTIONS DUE BY: AUGUST 6, 2013 TIME: 3:00P.M.

PROPOSAL DUE DATE: AUGUST 19, 2013 TIME: 2:00 P.M.

**CONTACT: LESLEY BROWN
PHONE: (201) 395-3469
FAX: (201) 395-3470
EMAIL: lbrown@panynj.gov**

JULY 18, 2013

SUBJECT: REQUEST FOR PROPOSALS (RFP) #34203: COGNOS BUSINESS INTELLIGENCE & PLANNING DEVELOPMENT & SUPPORT SERVICES CALL-IN PROGRAM DURING 2014-2016

Dear Sir or Madam:

The Port Authority of New York and New Jersey ("Port Authority"), hereby invites you to submit your Proposal for providing technology services ("Services") on a "call-in" basis for a one (1) year period from the date of award with two, one (1) year options, as more fully set forth in Attachment B, attached hereto and made a part hereof.

Also attached hereto as Attachment I, is a copy of the Port Authority General Contract Provisions. Any agreement entered into as a result of this RFP shall be comprised of this Cover Letter and all exhibits and attachments hereto as referenced in Table 1 labeled "RFP Contents" below (collectively, the "Agreement" or the "Contract"). You should carefully review the entire Agreement, including the General Contract Provisions, as these documents, together with an award letter (countersigned by the Port Authority and you) will form the Agreement that the Port Authority intends that you sign in the event of acceptance of your Proposal. You should therefore not make any changes to any document comprising this Agreement, nor restate any of its provisions in your Proposal or supporting material. The scope of the tasks for performance of the subject services are set forth in Attachment B.

Proposers shall take careful note, as this RFP may be different from prior Technology Consultant Call-In solicitations. The Technology Call-In Services Program ("Program") shall consist of various areas where specific technical skills or expertises ("Disciplines") are required. Each Discipline shall be considered a separate, standalone list with a start date and end date as defined in the RFP for that specific Discipline. In order to offer Services to the Port Authority, Proposers must pre-qualify in those services and categories of expertise on which their companies focus through this RFP. Upon evaluation of the submission, and Port Authority recommendation of your company for an award, the Proposer will be awarded a Call-In agreement, which may provide companies placed on the Technology Call-In list with eligibility to participate in the secondary mini-bid award process. Only companies who have received written approval from the Port Authority may be asked to respond to future solicitations on the Program described below. At its discretion, the Port Authority may retain multiple companies for performance of the subject Services.

The specific Discipline being sought in RFP#34203 is entitled Cognos Business Intelligence & Planning Development & Support Services ("Cognos Services"). Each Solicitation to form or refresh a specific Discipline list shall be considered a separate and independent solicitation, not related in any manner from any previous or any subsequent solicitations. As such, any and all information the Proposer requests to be included as part of the Port Authority's evaluation must be explicitly included with its submittal. Proposals will be reviewed solely on the information provided for the particular solicitation list. Any information sent for prior lists, no matter what the relevance, will not be considered.

It shall also be noted that being included or eliminated from one Discipline's list neither prejudices nor advantages a Proposer for any solicitation relating to any other Discipline and resulting lists. As such, Proposers are encouraged to submit Proposals for each Discipline they feel qualified to perform.

Note: The scope of services under this Call-In Agreement includes actual development, migration or support efforts as well as program management, guidance, management and overall review. It shall be noted that no products will be secured under the scope of this Call-In Agreement.

Table 1: RFP Contents

Request for Proposal #34203 Cover Letter
Attachment A: Agreement on Terms of Discussion
Attachment B: Cognos Scope of Services
Attachment C: Company Profile
Attachment D: Project Description Form
Attachment E: Hourly Rate Price Sheet
Attachment F: Proposer Reference Form
Attachment G: M/WBE Subcontracting Provisions
Attachment G1: M/WBE Participation Plan
Attachment G2: Statement of Subcontractor Payments
Attachment H: Certification of Recycled Materials Provision
Attachment H1: Certified Environmentally Preferable Products/Practices
Attachment I: General Contract Provisions
Exhibit 1: Non-Disclosure and Confidentiality Agreement

All communications concerning this RFP should be directed to the Buyer listed on the cover page. All questions regarding this RFP should be submitted in writing to the Buyer at the address or facsimile number listed on the cover page no later than 3:00 p.m. (EDT) on August 6, 2013.

The Buyer is authorized only to direct the attention of prospective Proposers to various portions of this RFP so that they may read and interpret such portions themselves.

Neither the Buyer nor any other employee of the Port Authority is authorized to interpret the provisions of this RFP or give additional information as to its requirements. If interpretation or other information is required, it will be communicated to Proposers by written addenda and such writing shall form a part of this RFP.

I. PROPOSAL FORMAT AND SUBMISSION REQUIREMENTS

To respond to this RFP, the Proposer shall submit a concise Proposal in response to the following basic format criteria:

The Proposal shall be no more than 20 pages (double-sided using Times New Roman/Arial (12) point or greater font size) not including resumes and certifications. One (1) reproducible original (containing original signatures and clearly designated as such) and nine (9) double-sided copies of the proposal as well as five (5) compact disks with digital versions of the

Proposal and Cost Proposal Forms. If the files on the compact disks are in PDF format, they must have a searchable function.

The Proposal must be submitted on or before the due date and time in accordance with the information on the cover page of this RFP and sent or delivered to the RFP Custodian at the address specified on the cover page.

Each copy of the Proposal as well as the parcel(s) used for shipping must be conspicuously marked with the Proposer's full legal name without abbreviations and address as well as the Proposer's Vendor Number, if available. In addition, the outside of the package must clearly state the title of this RFP, the number of this RFP and the Proposal Due Date. Failure to properly label Proposal submissions may cause a delay in identification, misdirection or disqualification of proposal submissions. **Note:** the compact disks must be enclosed in a cover (jewel case or compact disk sleeve).

Consistent with environmentally preferable procurement practices, the Port Authority requests all documents submitted to be in a form that can be easily recycled (i.e., no plastic covers or binding) and to provide only supporting literature which directly relates to the Proposal being submitted.

It is necessary to carry valid photo identification when attempting to gain access into the Port Authority building to hand deliver proposals.

II. PRE-PROPOSAL MEETING

The Pre-Proposal Meetings:

Questions may be permitted at the meeting; however, responses may be deferred and provided at a later date by written addenda.

Attendance is recommended. Information conveyed may be useful to Proposers in preparing their proposals and Proposers not attending assume all risks, which may ensue from non-attendance.

Attendees interested in attending should RSVP to Mr. Willie Cruz at hcruz@panynj.gov no later than 12 noon (EDT) of the business day preceding the scheduled date(s) to confirm their attendance and/or receive traveling directions.

Maximum two (2) individuals per company are allowed to attend. Two (2) valid forms of photo ID are required with one form being a driver license/state identification card or passport to attend the pre-submittal meeting.

Individuals should RSVP and must include **all** of the following information:

- a. Legal First and Last name
- b. Company Name
- c. Phone Numbers (office and/or cell)

d. Email address

Failure to provide complete and correct information may result in individuals being denied attendance.

III. PROPOSER PREREQUISITES

The Port Authority shall only consider proposals from Proposers demonstrating compliance with the following:

- A. The Proposer shall have had at least three (3) years of experience immediately prior to the date of the submission of its Proposal in providing Cognos Services with a combination of both Cognos Business Intelligence and Cognos Planning experience of a nature to that contained in Attachment B, "Cognos Scope of Work".

The Proposer must demonstrate to the satisfaction of the Port Authority that it has a minimum of three (3) staff members currently employed, each with at least three years of demonstrated qualifications and experience in providing Cognos Services with a combination of both Cognos Business Intelligence and Cognos Planning experience of a nature to that contained in Attachment B, "Cognos Call-In Scope of Work".

The Proposer may fulfill this prerequisite if it can demonstrate that the persons or entities owning and controlling the Proposer have had a cumulative total of at least the same number of years and type of direct continuous experience immediately prior to the submission of this proposal as is required of the Proposer, or has owned and controlled other entities which meet the requirement.

- B. During the time period stated in (A) above, the Proposer shall demonstrate satisfactory performance of at least three (3) contracts in providing Cognos Services with a combination of both Cognos Business Intelligence and Cognos Planning experience or similar Cognos services.
- C. The Proposer shall demonstrate that it has earned gross revenues of at least two hundred thousand dollars (\$200,000.00) for each of the last three (3) fiscal or calendar years from the type of Services described herein.

In the event a proposal is submitted by a joint venture the foregoing prerequisites will be considered with respect to such Proposal as follows:

With respect to subparagraph (A) and (B) above, the prerequisite will be considered satisfied if the joint venture itself, or any of its participants individually, can meet the requirements. With respect to subparagraph (C), the gross income of the joint venture itself may meet the prerequisites or the gross income of the participants in the joint venture may be considered cumulatively to meet the prerequisite.

If the Proposal is submitted by a common law joint venture, meaning a joint venture that has not been established as a distinct legal entity, each participant of the joint venture shall be held jointly and severally liable and must individually execute and perform all acts required by this proposal. Documents signed by a common law joint venture, in connection with this proposal, shall include the names of all participants of the joint venture followed by the words "acting jointly and severally." All joint venture Proposers must provide documentation of their legal status.

All Proposers must include documentation that they meet the above prerequisites. By furnishing this RFP to Proposers, the Port Authority has not made a determination that the Proposers have met the prerequisites or have otherwise been deemed qualified to perform the Services. In addition, a determination that a Proposer has met the prerequisites does not guarantee that such Proposer will be deemed qualified in connection with other proposal requirements included herein.

IV. FINANCIAL INFORMATION

The Proposer will be required to demonstrate that it is financially capable of performing the Services required by this Agreement. The determination of the Proposer's financial qualifications and ability to perform this Agreement will be in the sole discretion of the Port Authority. The Port Authority may require a form of financial guarantee as part of its determination hereunder, such as a Letter of Credit. The Proposer shall submit, with its proposal, the following:

- A. (1) Certified financial statements, including applicable notes, reflecting the Proposer's assets, liabilities, net worth, revenues, expenses, profit or loss and cash flow for the most recent year or the Proposer's most recent fiscal year.
- (2) Where the certified financial statements in (1) above are not available, then either reviewed statements from an independent accountant setting forth the aforementioned information shall be provided.

Where the statements submitted pursuant to subparagraphs (1) and (2) aforementioned do not cover a period which includes a date not more than forty-five (45) days prior to the Proposal Due Date, then the Proposer shall also submit a statement in writing, signed by an executive officer or his/her designee, that the present financial condition of the Proposer has not changed materially from the representations made on the statements submitted.

- B. A statement of work which the Proposer has, including any work on which a bid and/or proposal 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 Proposer's work on these jobs.
- C. The name and address of the Proposer's banking institution, chief banking representative handling the Proposer's account, the Proposer's Federal

Employer Identification Number (i.e., the number assigned to firms by the Federal Government for tax purposes), the Proposer's Dun and Bradstreet number, if any, the name of any credit service to which the Proposer furnished information and the number, if any, assigned by such service to the Proposer's account.

V. SELECTION PROCESS

EVALUATION CRITERIA AND RANKING

All Proposals will be reviewed by the Port Authority to determine whether they: adhere to the format required in this RFP; contain all required submissions; the Proposers meet the preconditions required for submission of a Proposal. For Proposals meeting such requirements, the following criteria, set forth in order of importance, will be utilized in the evaluation of Proposals:

A. Cost:

The overall estimated cost to the Port Authority as submitted on the Attachment E, "Hourly Rate Price Sheet".

B. Technical and Staff Experience:

The degree and extent to which the Proposer and its management have relevant and successful experience in providing Cognos Services with a combination of both Cognos Business Intelligence and Cognos Planning experience or similar Cognos services. Experience of Proposer and the Proposer's capability to meet the requirements of this RFP, including, but not limited to the number and quality of staff certified and experienced in implementing and managing similar services in a similar environment. The quality and depth of the experience and qualifications of the Proposer's staff including proposed subcontractors, who will be performing services hereunder.

C. Management Approach:

The clarity and feasibility of the Proposal, which shall include the Proposer's management philosophy, principles and programs to be utilized by the Proposer in performing the Services, which shall include but not be limited to the M/WBE subcontractor's plan, ongoing training programs, support resources, vendor alliances, quality assurance programs, and certifications.

D. Business Risk:

The Proposer's ability to mitigate and eliminate business risk. The degree of business risk assumed by the Port Authority, including but not limited to, assessment of the impact resulting from the possible failure of the Contractor to perform under the terms and conditions of this Contract and the Port Authority's assessment of its ability to

immediately replace the Contractor in a manner that maintains or improves the quality and continuity of the training services at each facility.

VI. SUBMISSION REQUIREMENTS

To respond to this RFP, provide the following information:

A. Letter of Transmittal

The Proposer shall submit a letter on its letterhead, signed by an authorized representative, stating its experience and qualifications in meeting the requirements of this RFP. This letter shall include a statement on whether the Proposer is submitting a proposal as a single entity, a joint venture, or is partnering with another firm in a prime/subcontracting relationship. In all cases, information required for a single entity is required for each participant in a joint venture.

The Letter of Transmittal shall contain:

- (1) Name and address of the Proposer and an original signature on the Letter of Transmittal by an authorized representative on behalf of the Proposer;
- (2) Name(s), title(s) and telephone number(s) of the individual(s) who are authorize to negotiate and execute the Contract;
- (3) Name, title and telephone number of a contact person to which the Port Authority can address questions or issues related to this RFP;
- (4) Name and address of proposed subcontractors, if any;
- (5) **a.** If a corporation:
 - a statement of the names and residences of its officers, and
 - a copy of its Certificate of Incorporation, with a written declaration signed by the secretary of the corporation, with the corporate seal affixed thereto, that the copy furnished is a true copy of the Certificate of Incorporation as of the date of the opening of the Proposals;
- b.** If a partnership:
 - a statement of the names and residences of its principal officers, indicating which are general and which special partners are;
- c.** If an individual: a statement of residence;
- d.** If a joint venture: information on each of the parties consistent with the information requested above; if the

Contract is awarded to each member will be jointly and severally liable under the Contract.

B. Executive Summary:

The Proposer shall submit a summary presenting the major features of its Proposal and how the Proposal satisfies the requirements contained in this RFP, as well as the special competencies and expertise of the Proposer to meet the requirements of this RFP.

C. Certifications With Respect to the Contractor's Integrity Provisions

This Agreement contains a clause entitled "Integrity" included as paragraph Number 36 of the accompanying General Contract Provisions. By submitting a Proposal, the Contractor shall be deemed to have made the certifications contained therein unless said Contractor submits a statement with its proposal explaining the inability to make such certification(s). Such statement shall be submitted in a separate envelope along with your proposal, clearly marked "CERTIFICATION STATEMENT".

D. Documentation of Proposer Prerequisites

The Proposer shall submit documentation to demonstrate that it meets all prerequisites, if any, included herein.

E. In the front of your Proposal, a copy of Attachment A: Agreement on Terms of Discussion, signed by an officer of your company. All information contained in the Proposals is subject to the "Agreement on Terms of Discussion" and is not generally considered confidential or proprietary. All materials submitted in response to or in connection with this RFP shall become the property of the Port Authority. Selection or rejection of Proposals shall not affect this right.

F. Complete a copy of Attachment C: Company Profile.

G. Resumes for the personnel who will be responsible for the performance of the requested Services, clearly indicating their relevant experience and specific areas of expertise. Each resume shall be two (2) pages maximum, single-sided using Times New Roman/Arial 12-point or greater font size and shall include education, professional credentials and employment histories. In addition, include the resumes of subcontractors that will be involved in the provision of Services required under this Agreement.

The number of employees in each category set forth in Attachment B: Section D: "Description of Technical Skill/Specialty" as well as a separate listing that summarizes, in matrix format, which individuals, if any, are Cognos Business Intelligence & Cognos TM1 Certified at the time of Proposal submission. The matrix shall include the specific type of certification, the name and date received along with any/all applicable versions. The Authority reserves the right to request copies of the actual certification documents for verification. If a certification cannot be verified by the Port Authority, that certification will not be considered for the purpose of evaluation.

H. Specific relevant experience of your firm. This shall include, but not be limited to, a list of projects for which similar services have been provided. Provide a list of the projects,

and a contact as required for the Port Authority to confirm said information as requested on Attachment D: "Project Description Form".

- I. Complete a copy of Attachment E: "Hourly Labor Rate Price Sheet". All hourly rate pricing shall be "all inclusive" and firm during the term of the Agreement. Prices quoted shall include, but not be limited to, all labor, training, communications, insurance, and administrative services that you will provide in order to deliver Services that meet or exceed the requirements stated herein.
- J. All Proposers are to provide a description of the proposed management approach for performing the required Services, being responsive to the Port Authority's needs, keeping the Port Authority apprised of the project status and ensuring the quality of service.
- K. Your attention is directed to Attachment G: "M/WBE Subcontracting Provisions", in which the Authority has stated the goals for Minority/Women-owned Business Enterprise (M/WBE) participation in this project. Submit details on how you intend to meet these goals. A listing of certified MBE/WBE firms will be provided upon request.
- L. In addition to the prerequisites project verification form hereto as Attachment D: "Project Description Form", the form shall also be used in the evaluation process. If there are any other Cognos Business Intelligence & Planning Development & Support and Integration Services references beyond those submitted as part of the prerequisites requests on Attachment D, please include Attachment F: "Proposer Reference Form."

Complete and submit the "Proposer Reference Form" annexed hereto as Attachment F: "Proposer Reference Form". The Port Authority may consult any references familiar with the Proposer regarding its current or prior operations and projects, financial resources, reputation, performance, or other matters. Submission of qualification information shall constitute permission by the Proposer for the Port Authority to make such inquiries and authorization to third parties to respond thereto.

- M. Proposals must be signed by an authorized corporate officer (e.g., President or Vice President), General Partner, or such other individual authorized to bind the Proposer to the provisions of its qualifications and this RFP. A copy of such authorization shall be included with Proposal.

N. General Conflict of Interest

If the Proposer, or any employee, agent or subcontractor of the Proposer, may have a possible conflict of interest, or may give the appearance of a possible conflict of interest, the Proposer shall include in its Proposal a statement indicating the nature of the conflict. The Port Authority reserves the right to disqualify the Proposer if, in the Port Authority's sole discretion, any interest disclosed or discovered from any source could create a conflict of interest or give the appearance of a conflict of interest. The Port Authority's determination regarding any questions of conflict of interest will be final.

O. Organizational Conflict of Interest

1. This Agreement may give rise to a potential for an organizational conflict of interest. An organizational conflict of interest exists when the nature of the work to be performed under the agreement may, without some form of restriction on future activities, result in an unfair competitive advantage to the Contractor.

a. The Contractor shall have access to confidential and/or sensitive Port Authority information in the course of Agreement performance. Additionally, the Contractor may be provided access to proprietary information obtained from other contracted entities during Agreement performance. The Contractor agrees to protect all such information from disclosure unless so authorized, in writing, by the Port Authority and to refrain from using such information for any purpose other than that for which it was furnished. See also Section M below entitled "Non-Disclosure and Confidentiality Agreement".

The Proposer shall provide any other information that is related to the requirements specified herein, that the Proposers believes would be helpful to the Port Authority in the evaluation of its proposal.

b. To the extent that the Contractor either (i) uses confidential and/or sensitive Port Authority information or proprietary information obtained from other Port Authority contractors to develop any form of document, report, or plan that is determined by the Port Authority to be the basis, in whole or in part, of any subsequent solicitation issued by the Port Authority or (ii) develops written specifications that are used in any subsequent solicitation issued by the Port Authority, the Contractor agrees that it shall not be eligible to compete for such subsequent solicitation(s) as a prime or principal contractor or as part of any teaming arrangement unless the Port Authority provides, in writing, a specific waiver of this restriction. The duration of any restriction imposed under this subparagraph shall not exceed the length of the initial performance period of any subsequently awarded agreement for which the Contractor was ineligible to complete.

If the Proposer or any employee, agent or subcontractor of the Proposer may have a possible conflict of interest, or may give the appearance of a possible conflict of interest, the Proposer shall include in its proposal a statement indicating the nature of the conflict. The Port Authority reserves the right to disqualify the Proposer if, in its sole discretion, any interest disclosed from any source could create a conflict of interest or give the appearance of a conflict of interest. The Contractor awarded this Contract may not participate in any future solicitations issued by the Port Authority, or perform services as a prime or subcontractor, relating to the provision of Cognos Call-In Services or related services, at any Port Authority owned or operated facilities during the duration of this Contract, including any options or extensions. The Port Authority's determination regarding any questions of conflict of interest shall be final.

2. The Contractor, by submitting its Proposal, agrees to the above stated conditions and terms and further agrees to perform all duties under the Agreement and, in doing so, not to enter into contractual agreements with Port Authority prime contractors and first-tier subcontractors in such a way as to create an organizational conflict of interest.
3. If the Port Authority determines that the Contractor has violated any term of this numbered clause, the Port Authority may take any appropriate action available under this Agreement, the law or regulations to obtain redress including, but not be limited to, requiring the Contractor to terminate any affiliation or contractual arrangement with a Port Authority prime contractor or first-tier subcontractor at no cost to the Port Authority, determining the Contractor ineligible to compete for or be awarded any subsequent or "follow-on" contracts that may be based upon the Contractor's actions under this Agreement or violations of this numbered clause, or terminating this Agreement, in whole or in part.

P. Background Checks:

The Contractor awarded this Contract will 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 subcontractor) 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 as provided herein. Staff that is rejected for a credential for any reason is 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.

The length of time researched for the identity check/background screening on new hires, shall be at a minimum of ten (10) years of employment history or verification of what an employee documented he/she has done in the last ten (10) years preceding the date of the investigation, resources utilized to perform this, and the frequency at which it is performed on current employees.

Q. Non-Disclosure and Confidentiality Agreement:

Prior to award of this agreement, at the direction of the Port Authority, the Contractor and its employees, agents and subcontractors will be required to sign a "Non-Disclosure and Confidentiality Agreement". **Proposers are only required to sign this document if awarded the Contract.** While an example of a "Non-Disclosure and Confidentiality Agreement" is set forth as Exhibit 1, the Port Authority may, in its sole discretion, require different, updated or amended agreement(s) to be signed prior to award.

Confidential information shall mean all information disclosed to the Contractor or the personnel provided by the Contractor hereunder which relates to the Port Authority's past, present, and future research, development and business activities including, but not limited to, software and documentation licensed to the Port Authority or proprietary to the Port Authority 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 Agreement.

Confidential information shall also mean and include collectively, as per *The Port Authority of New York & New Jersey Information Security Handbook (October 15, 2008, corrected as of February, 9 2009)*, Confidential Proprietary Information, Confidential Privileged Information and information that is labeled, marked or otherwise identified by or on behalf of the Port 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.

The Contractor shall hold all such confidential information in trust and confidence for the Port Authority, and agree that the Contractor and the personnel provided by the Contractor hereunder shall not, during or after the termination or expiration of this Agreement, disclose to any person, firm or corporation, nor use for its own business or benefit, any information obtained by it under or in connection with the supplying of services contemplated by this Agreement. The 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 Port Authority or third persons in connection with their services hereunder, either before or after termination or expiration of this Agreement. 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 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 Agreement or coming to the Contractor's attention in connection with this Agreement.

The terms of the "Non-Disclosure and Confidentiality Agreement" provided by the Port Authority to the Contractor for execution prior to Award and the Port Authority of New York and New Jersey Information Security Handbook shall govern in the event of any conflict with this provision or Exhibit 1, "Non-Disclosure and Confidentiality Agreement".

Without the express written approval of the Chief Technology Officer or designee, you shall keep confidential, and shall require your subcontractors and your employees to keep confidential (a) all information disclosed by the Port Authority or its consultants or contractors to you or (b) developed by you or your subcontractors in the performance of services hereunder.

- R. The Port Authority has attached to this RFP as Attachment I, General Contract Provisions governing the Contract. The Proposer is expected to agree with these General Contract Provisions. However, if the Proposer has any specific exceptions, such exceptions should be set forth in a separate letter included with its response to this RFP. After the Proposal Due Date, the Proposer will be precluded from raising any exceptions unless such exceptions are justified by and directly related to substantive changes in the business or technical requirements and are agreed to by the Proposer and the Port Authority

Acceptance shall be only by mailing to or delivering at the office designated by the Proposer in its Proposal, a notice in writing signed by an authorized representative on behalf of the Port Authority specifically stating that the Proposal is accepted or by execution of an agreement covering the subject matter of this RFP signed by authorized representatives of the Port Authority and the Proposer. No other act of the Port Authority, its Commissioners, officers, agents, representatives, or employees shall constitute acceptance of a Proposal. Rejection of a proposal shall be only by either: (a) a notice in writing specifically stating that the Proposal is not accepted, signed by an authorized representative of the Port Authority and mailed to or delivered to the Proposer at the office designated in the Proposal; or (b) omission of the Port Authority to accept the Proposal within 180 days after the Proposal Due Date. No other act of the Port Authority, its Commissioners, officers, agents, representatives or employees shall constitute rejection of a Proposal.

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

The Port Authority shall not be liable for any costs incurred by the Proposer in the preparation, submittal, presentation, or revision of its qualifications, or in any other aspect of the Proposer's pre-contract activity. No Proposer is entitled to any compensation except under an agreement for performance of services signed by an authorized representative of the Port Authority and the Proposer.

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

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

Also, Proposers are encouraged to periodically access the Port Authority website at <http://www.panynj.gov/business-opportunities/bid-proposal-advertisements.html> for RFP updates and addenda.

Sincerely yours,

Lesley Brown, MBA/GM
Senior Buyer
Commodities and Services Division
Procurement Department

Attachments
A, B, C, D, E, F, G, G1, G2, H, H1, I,

ATTACHMENT A
AGREEMENT ON TERMS OF DISCUSSION

The Port Authority's receipt or discussion of any information (including information contained in any proposal, vendor qualification, ideas, models, drawings, or other material communicated or exhibited by us or on our behalf) shall not impose any obligations whatsoever on the Port Authority or entitle us to any compensation therefor (except to the extent specifically provided in such written agreement, if any, as may be entered into between the Port Authority and us). Any such information given to the Port Authority before, with or after this Agreement on Terms of Discussion ("Agreement"), either orally or in writing, is not given in confidence. Such information may be used, or disclosed to others, for any purpose at any time without obligation or compensation and without liability of any kind whatsoever. Any statement which is inconsistent with this Agreement, whether made as part of or in connection with this Agreement, shall be void and of no effect. This Agreement is not intended, however, to grant to the Port Authority rights to any matter, which is the subject of valid existing or potential letters patent. The foregoing applies to any information, whether or not given at the invitation of the Authority.

Notwithstanding the above, and without assuming any legal obligation, the Port Authority will employ reasonable efforts, subject to the provisions of the Port Authority Freedom of Information Code and Procedure adopted by the Port Authority's Board of Commissioners on March 29, 2012, which may be found on the Port Authority website at: <http://www.panynj.gov/corporate-information/pdf/foi-code.pdf>, not to disclose to any competitor of the undersigned, information submitted which are trade secrets or is maintained for the regulation or supervision of commercial enterprise which, if disclosed, would cause substantial injury to the competitive position of the enterprise, and which information is identified by the Proposer as proprietary, which may be disclosed by the undersigned to the Port Authority as part of or in connection with the submission of a proposal.

(Company)

(Signature)

(Title)

(Date)

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DO NOT RETYPE

**ATTACHMENT B
COGNOS CALL-IN
SCOPE OF SERVICES**

A. 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, terminal 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 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.

The Port Authority is hereby seeking proposals from qualified firms to provide Cognos Call-In Services as more fully described herein.

B. DESCRIPTION OF WORK

The Port Authority's Technology Services Department (TSD) has the responsibility to provide Cognos Business Intelligence & Planning Development Services to support the Integrated Capital Management System and other various reporting needs throughout the Port Authority departments.

The Contractor shall work with the Port Authority to perform services that involve, but are not limited to the following functions:

- Requirements gathering;
- Modeling and designing TM1 planning applications;
- Defining the data requirements and structure for the application;
- Data-warehouse design and development of various (extract transform & load)ETL feeds;
- Production support including resolving end user issues, and
- System test planning & training.

C. CURRENT ENVIRONMENT

The Authority currently utilizes the Cognos suite of products to build financial planning applications and for reporting. The Cognos suite is currently used for all capital project data reporting & analytics, capital project forecasting and budgeting, grants management, World Trade Center allocations tracking and retail cost tracking.

One of the key programs that the Cognos Call-In technology is used for is the Integrated Capital Management System (ICMS). Using ICMS across the agency has resulted in the development of a standardized central project repository used to analyze and report on capital performance data for agency users, including the development of various planning modules, such as:

- project financials;
- monthly budgeting and forecasting;
- deliverability risks, and grant management..

Each of these tasks have been integrated into the ICMS to support business functions and improve on capital performance.

Two phases of this program have been completed and the third phase is currently underway. As part of this program various TM1 applications have been developed such as Project budgeting & forecasting, grants management, aviation revenue model etc.

A data-warehouse has been developed on which there are over thirty (30) reports used by over two hundred (200) users. There is a rollout of query studio for business analytics for these users as well.

D. DESCRIPTION OF TECHNICAL SKILL / SPECIALITY:

Cognos Framework Manager and TM1 Certifications are required upon submission of proposals pertaining to a task order solicitation as set forth below:

1. Cognos TM1 Architect:

Cognos TM1 Architect shall meet the following minimum qualifications:

- Expertise in designing & developing TM1 applications;
- Writing TI's to move data from and to TM1;

- Provides guidance on best practices on TM1 design and development Supports existing TM1 applications and TI's;
- Design and develop Performance Management solutions using their TM1 technical knowledge and expertise;
- Work with the client to design, develop and implement Cognos TM1 Solutions and will be responsible for their performance, availability and scalability;
- Shall have two (2) years of experience writing Cognos TM1 applications from the ground up and two (2) years of experience writing Cognos TI's.

Cognos TM1 Architect role will strategize, design and implement a Cognos TM1 solution based on data availability, environment, user requirements, situation, and logistics.

2. **Cognos Developer/Modeler:**

Cognos Developer/Modeler shall meet the following minimum qualifications:

- Provides expertise in designing & developing Frameworks and reports that go against the data-warehouse and other systems;
- Provides guidance on best practices, supports existing frameworks & reports;
- Translate user requirements into technical specifications, design and develop framework manager models, design and develop reports, dashboard and cubes, create and maintain technical application documentation.
- Shall have five (5) years experience designing and developing frameworks and five (5) years of solid report writing experience.

Development activities will include configuration updates to existing software and/or developing new programs/models to address a particular business need. Must have

3. **Cognos Report Writer:**

Cognos Report Writer shall meet the following minimum qualifications:

- Provides expertise in writing Cognos reports and dashboards;
- Supports existing Cognos applications;
- Shall translate user requirements into technical specifications
- Design and develop reports, dashboard and cubes;
- Create and maintain technical application documentation;
- Shall have three (3) years experience maintaining frameworks and three (3) years of solid report writing experience.

Development activities will include configuration updates to existing software and/or developing new programs/models to address a particular business need.

4. **Data Warehouse & ETL Architect:**

Data Warehouse & ETL Architect shall meet the following minimum qualifications:

- Creates physical database tables;

- Administers, maintains, develops and implements policies and procedures for ensuring the security and integrity of the data warehouse databases and servers;
- Implements data models and database designs, data access and table maintenance codes;
- Resolves database performance issues, database capacity issues, replication, and other distributed data issues;
- Works with data dictionary software packages to produce and maintain current data models;
- Recovers corrupted data and uses tuning tools to improve database performance
- Works with application development teams focusing on the back-end portion of the data storage considerations and performance considerations for the applications being developed;
- Shall have five (5) years of data modeling/data warehousing experience and over three (3) years ETL experience in data manager/SSIS or equivalent tool.

In addition, the Data Warehouse & ETL Architect shall be familiar with standard concepts, practices, and procedures within database administration and data warehouse best practices.

5 Cognos Maintenance Analyst:

Cognos Maintenance Analyst shall meet the following minimum qualifications:

- Have the capabilities to review Cognos code to ensure it adheres to design best practice and development standards (including Packages, Reports and Powercubes);
- Proactively monitor Cognos hardware/software environments;
- Making recommendations for improvements for any issues identified and predicting where capacity limits are going to be reached;
- Patch Cognos software and apply minor version upgrades;
- Install software as part of any capacity upgrade project;
- Shall have a minimum of five (5) years experience with Cognos technologies and over five (5) years experience independently supporting Cognos applications and Cognos reports.

6. Cognos Business Analyst & Trainer:

Cognos Business Analyst & Trainer shall meet the following minimum qualifications:

- Work with the customer, end users, technical architects, and application designers to define the data requirements and structure for the application;
- Perform requirements gathering and requirements documentation for a system implementation;
- The capabilities to understands system integration and the system interaction within the business;
- Provide production support, including resolving end user service requests;
- Troubleshooting and providing solutions to end user issues;
- Organize, implement and participate with system test planning;
- Develop system test scripts
- Produce documentation for software test reports

- Shall have the minimum of five (5) years experience with Cognos technologies and over five (5) years experience independently supporting Cognos applications and Cognos reports.
- Shall have three (3) years of training and/or business analysis experience.

E. TASK ORDER REQUIREMENTS:

The Contractor shall be managed directly by the TSD Manager, Applications Architecture. The Authority reserves the right of approval of all personnel performing services under this Agreement, including any substitution of personnel. Work shall be performed in cooperation and conjunction with other Contractors and representatives of the Port Authority.

Due to the sensitive nature of the work, all individuals and all Contractors will be required to sign and adhere to Port Authority Non-Disclosure Agreement. In addition, Contractor's staff and subcontractor's shall sign Port Authority Security policy compliance statements consistent with our Information Security policies and procedures.

The Contractor shall provide Cognos Technical Skill/Specialty personnel with the experience identified in task order as well as any other security toolset skills as identified in the individual task order:

Below are task orders expected in the future, however not guaranteed:

- Development of TM1 planning modules for reconciling a project based on GL system with a project budgeting system, extension of grants to incorporate revenues, and baselining model;
- Development of a model that allows for preparing proposed capital plan what-if scenarios and for creating snapshots (work plans) of the forecast datasets for the quarterly updates;
- Replacement of the existing Monthly Capital Performance Report System with one that allows for all entering of all data, which includes Board authorizations and project issues within the ICMS framework;
- Development of a framework that standardizes reference data for certain fields across ICMS source systems; and
- Extend data-warehouse and add data-marts incorporating data from various engineering and project management office systems.

**ATTACHMENT C
COMPANY PROFILE**

Fill out items 1 through 11 in the Company Profile. As part of your submission, attach your Certificate of Incorporation right after the Company Profile. If your company is a Port Authority certified M/W/SBE, also include a copy of your Port Authority certification after the Company Profile.

1. Company Name (print or type):

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

3. Business Telephone Number:

4. Business Fax Number:

5. Firm website:

6. Federal Employer Identification Number (EIN):

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

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

9. Officers or Principal of Company and Title:

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

Primary: _____

Backup: _____

11. Is your firm certified by the Port Authority as a Minority-Owned, Woman-Owned, or Small Business Enterprise (M/W/SBE)? Yes No

If yes, please attach the **Port Authority** certification as a part of your profile.

If your firm is an M/WBE not currently certified by the Port Authority, see the Authority's web site - <http://www.panynj.gov/business-opportunities/supplier-diversity.html> to receive information and apply for certification.

**ATTACHMENT D
PROJECT DESCRIPTION FORM**

Please provide a minimum of three (3) projects on the firm's performance of similar Cognos Services, as reference in Attachment B: Cognos Services Scope of Work within the last three (3) years (2009-2012). Use additional sheets as necessary.

Company Name: _____

Project Description: _____

Contact Name: _____

Contact Phone#: _____

Contact Email: _____

Project Value: _____

Project Timeframe: _____

ATTACHMENT E
HOURLY RATE PRICE SHEET

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.
- b. All Proposers 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). Proposers are advised that the Items on the Pricing Sheet(s) correspond to the required services set forth in the Specifications hereunder.
- d. Proposers are asked to ensure that all figures are inserted as required, and that all computations made have been verified for accuracy.

The Proposer is advised that the Port Authority may verify only that RFP or those RFPs that it deems appropriate and may not check each and every RFP submitted for computational errors. In the event that errors in computation are made by the Proposer, the Port Authority reserves the right to correct any error and to recompute the Estimated Contract Price, as required, based upon the applicable hourly labor rate prices inserted by the Proposer, which amount shall govern in all cases.

- e. In the event that a Proposer proposes an amount in the Estimated Cost column but omits to propose an Hourly Labor Rate Price for that amount in the space provided, the Port Authority reserves the right to compute and insert the appropriate Hourly Labor Rate Price.
- f. The Total Estimated Contract Price is solely for the purpose of facilitating the comparisons of Proposals. Compensation shall be in accordance with the section of this Contract entitled "Payment".
- g. At the Authority's discretion, Contractor may be required to enter into a new agreement for each of the following three (3) years of the Program, at the same hourly labor rates, which agreements shall be identical to this Agreement, unless otherwise mutually agreed upon by the parties. Subsequent agreements shall be sent to the Contractor at least 30 days prior to the end of the current term.

2. The actual number and category of positions to be staffed throughout the duration of the contract will be determined based on the individual subject task orders.
3. The Port Authority works an 8-hour day. A typical workday is 8 AM to 5 PM, with 1 hour for lunch, although any specific requirements shall be specified in the individual task orders.
4. All rates quoted in the Hourly Labor Rate Price Sheet are inclusive of travel & related expenses, and all related employee, and support costs, which shall not be compensated for separately.
5. Payment terms shall be as defined more fully in specific task orders.

**ATTACHMENT F
PROPOSER REFERENCE FORM**

Name of Proposer: _____

Please provide a list of references on the firm's performance of similar work within the last five years, including all current agreements.

Customer Name: _____

Address: _____

Contact Name and Title: _____

Phone and Fax Numbers of Contact: _____

Email _____

Agreement date(s): _____

Agreement cost: _____

Description of work: _____

Customer Name: _____

Address: _____

Contact Name and Title: _____

Phone and Fax Numbers of Contact: _____

Email _____

Agreement date(s): _____

Agreement cost: _____

Description of Work: _____

Customer Name: _____

Address: _____

Contact Name and Title: _____

Phone and Fax Numbers of Contact: _____

Email _____

Agreement date (s): _____

Agreement cost: _____

Description of work: _____

ATTACHMENT G
M/WBE SUBCONTRACTING PROVISION

The Port Authority has a long-standing practice of making its business opportunities available to Minority Business Enterprises (MBEs) and Women-Owned Businesses (WBEs) and has taken affirmative steps to encourage such firms to seek business opportunities with the Port Authority. The successful Proposer will use good faith efforts to provide for meaningful participation by Port Authority certified M/WBEs as defined in this document, in the purchasing and subcontracting opportunities associated with this contract, including purchase of equipment, supplies and labor services.

Minority Business Enterprise (MBE) - shall mean a business entity which is at least 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 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) African-American persons having origins in any of the Black African racial groups not of Hispanic origin;
- (b) Latino Americans 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.

Women-Owned Business Enterprise (WBE) - shall mean a business enterprise which is at least 51% owned by one or more women, or, in the case of a publicly held corporation, at least 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.

The Contractor shall use good faith efforts to achieve participation equivalent to 12% of the total Contract price for MBEs and 5% of the total Contract price for WBEs.

Good faith efforts to include participation by M/WBEs shall include, but not be limited to the following:

- 1) Dividing the services and materials to be procured into small portions where feasible;

- 2) Giving reasonable advance notice of specific subcontracting and purchasing opportunities to such firms as may be appropriate;
- 3) Soliciting services and materials from M/WBEs, which are certified by the Port Authority;
- 4) Ensuring that provision is made for timely progress payments to the M/WBEs and;
- 5) Observance of reasonable commercial standards of fair dealing in the respective trade or business.

Proposers are directed to use form PA3749B as the recording mechanism for the M/WBE participation Plan, annexed hereto as Attachment G1 or may be downloaded at <http://www.panynj.gov/business-opportunities/become-vendor.html>.

The M/WBE Plan submitted by the Contractor to the Port Authority shall contain, at a minimum, the following:

- Identification of M/WBE's: Provide the names and addresses of all M/WBEs included in the Plan. If none are identified, describe the process for selecting participant firms in order to achieve the good faith goals under this Contract.
- Level of Participation: Indicate the percentage of M/WBE participation expected to be achieved with the arrangement described in the Plan.
- Scope of Work: Describe the specific scope of work the M/WBE's will perform.
- Previous M/WBE Participation: Describe any previous or current M/WBE participation, which the Proposer has utilized in the performance of its contracts.

All M/WBE subcontractors listed on the M/WBE Participation Plan must be certified by the Port Authority in order for the Contractor to receive credit toward the M/WBE goals set forth in this Contract. Port Authority M/WBE certified vendor information is available to all vendors who are registered with the Port Authority. Please log on to <https://panynjprocure.com/VenLogon.asp> to search for M/WBEs by a particular commodity or service. The Port Authority makes no representation as to the financial responsibility of such firms or their ability to perform Work under this Contract.

Contractors shall include their M/WBE Participation Plan with their Task Order, to be reviewed and approved by the Authority's Office of Business Diversity & Civil Rights

Contractors may request a waiver of the M/WBE participation goals set forth in this Contract by providing with its proposal, information in accordance with this provision and the provision entitled "M/WBE Good Faith Participation" in the Standard Terms and Conditions of this Contract.

If the Contractor wishes to subcontract a portion of the Work through a firm not listed in the Directory, but which the Contractor believes should be eligible because it is (1) an M/WBE, as defined above and (2) competent to perform portions of the Work, the Contractor shall submit an

M/WBE Uniform Certification Application to the Port Authority of New York and New Jersey, Office of Business Diversity & Civil Rights), 233 Park Avenue South, 4th Floor, New York, NY 10003. The application is available online at <http://www.panynj.gov/business-opportunities/sd-become-certified.html>. In addition, to update your certification file and to advise OBJO of changes to any information, please email these changes to OBJOcert@panynj.gov. Credit toward applicable goals will be granted only to Port Authority certified vendors. For more information about M/WBE Programs, call (212) 435-7819.

ATTACHMENT G1
M/WBE PARTICIPATION PLAN SUBMISSION FORMS

(AN M/WBE PARTICIPATION PLAN SHALL BE SUBMITTED AND WILL BE EVALUATED AS PART OF THE MANAGEMENT APPROACH. PLEASE INCLUDE FORM **PA 3749B**, TO BE COMPLETED BY THE PROPOSER FOR THE M/WBE PARTICIPATION PLAN SUBMISSION REQUIREMENT. IN THE EVENT OF AN M/WBE PLAN MODIFICATION, PLEASE USE FORM **PA 3749C**.)

**ATTACHMENT G2
STATEMENT OF SUBCONTRACTOR PAYMENTS**

INSTRUCTIONS FOR STATEMENT OF SUBCONTRACTOR PAYMENT

Attached is the Statement of Subcontractor Payments form, which shall be submitted with every invoice to be used in conjunction with the M/WBE Participation Plan.

M/WBE Participation Report

Contract/PO No.: _____ Date of Invoice _____
 Contract Title: _____ Committed M/WBE Goals: M _____ W _____
 Prime Contractor Name: _____
 Contract/PO Amount: _____ Award date: _____
 PA Project Manager: _____ Completion date: _____
 M/WBE Participation to date M _____ W _____

Subcontractor's Name	Description of Work Performed or Materials Supplied by Subcontractor	Subcontractor's Address & Phone No.	M/WBE Status	Total Contract Amount Awarded to Sub	Total of Sub's Previous Requests	Amount Paid Sub to date	Amount of This Request

In connection with the above-captioned contract:
 I HEREBY DECLARE AND AFFIRM that I am a duly authorized representative of this company
 and that the following Minority and Women Business Enterprises have been contracted with and have furnished,
 or are furnishing and preparing materials for, and have done or are doing labor on the above captioned contract;
 that there is due and to become due them, respectively, the amounts set opposite their names for materials or labor as stated;
 and that this is a full, true, and complete statement of all such MBEs/WBEs and of the amounts paid, due, and to become due to them:

Signature _____ Title _____ Telephone _____
 Print Name _____

ATTACHMENT H

CERTIFICATION OF RECYCLED MATERIALS PROVISION

Proposers shall submit, with their proposal, Attachment I1: the Certified Environmentally Preferable Products / Practices Form attesting that the products or items offered by the Proposer 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.

Recycling Definitions:

For purposes of this solicitation, the following definitions shall apply:

- a. **"Recovered Material"** shall be defined as 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"** shall be defined as 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"** shall be defined as any material or by-product generated after the manufacture of a product but before the product reaches the consumer, such as damaged or obsolete products. Pre-consumer Material does not include mill and manufacturing trim, scrap, or broken material that is generated at a manufacturing site and commonly reused on-site in the same or another manufacturing process.
- d. **"Recycled Product"** shall be defined as 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"** shall be defined as 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"** shall be defined as 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.

**ATTACHMENT H1
CERTIFIED ENVIRONMENTALLY PREFERABLE PRODUCTS/PRACTICES**

Proposer 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, Proposers are encouraged to provide information regarding their environmentally preferable/sustainable business practices as they relate to this contract wherever possible. Proposers **must** complete this form and submit it with their response, if appropriate. Proposers **must** submit appropriate documentation to support the items for which the Proposer indicates a "Yes" and present this documentation in the proper sequence of this Attachment.

1. Packaging

Has the Proposer implemented any of the following environmental initiatives? (A checkmark indicates "Yes")

- ___ Use of corrugated materials that exceed the 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 must be included with the submission.

2. Business Practices / Operations / Manufacturing

Does the Proposer 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 must be included with the submission.

3. Training and Education

Does the Proposer 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 Proposer conduct environmental training of its own staff?

- Yes No If yes, Proposer must attach a description of the training offered and the specific criteria targeted by the training.

4. Certifications

Has the Proposer 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

Attachment I
General Contract Provisions

TABLE OF CONTENTS

1. GENERAL AGREEMENT.....	4
2. PAYMENTS.....	4
3. DURATION	5
4. DEFINITIONS	5
5. GENERAL PROVISIONS	6
6. INTELLECTUAL PROPERTY.....	7
7. PROPRIETY RIGHTS IN SUBJECT MATTER NOT WITHIN THE INTELLECTUAL PROPERTY CLAUSE	8
8. INDEMNITY IN REGARD TO INFRINGEMENT MATTER	8
9. COMPLIANCE WITH WEB SITE TERMS OF USE AND PRIVACY POLICIES	9
10. TIME IS OF THE ESSENCE.....	9
11. FINAL PAYMENT	9
12. DEFAULT, REVOCATION OR SUSPENSION OF CONTRACT	10
13. WITHHOLDING OF PAYMENT	13
14. CONTRACTOR PERSONNEL STANDARDS OF PERFORMANCE.....	14
15. HIGH SECURITY AREAS.....	14
16. NOTIFICATION OF SECURITY REQUIREMENTS.....	15
17. INSURANCE PROCURED BY THE CONTRACTOR.....	16
18. ASSIGNMENTS AND SUBCONTRACTS	18
19. CERTAIN CONTRACTOR'S WARRANTIES.....	19
20. RIGHTS AND REMEDIES OF THE AUTHORITY	20
22. TAX EXEMPTIONS.....	21
23. TITLE TO EQUIPMENT.....	21
24. NOTICE REQUIREMENTS.....	22
25. SERVICE OF NOTICES ON THE CONTRACTOR.....	23

26. NO THIRD PARTY RIGHTS.....	23
27. INDEMNIFICATION AND RISKS ASSUMED BY THE CONTRACTOR.....	23
28. PORT AUTHORITY TECHNOLOGY STANDARDS AND GUIDELINES AND SUPPLEMENTAL GUIDELINES FOR THE PORT AUTHORITY TECHNOLOGY SERVICES DEPARTMENT	25
29. APPLICABLE LAW	25
30. AUTHORITY OF THE DIRECTOR.....	25
31. APPROVALS BY THE DIRECTOR.....	26
32. CONTRACT REVIEW AND COMPLIANCE AUDITS	26
33. AUTHORITY ACCESS TO RECORDS	26
34. CLAIMS OF THIRD PERSONS	27
35. NO DISCRIMINATION IN EMPLOYMENT, EQUAL EMPLOYMENT OPPORTUNITY.....	27
36. INTEGRITY	27
37. CONFIDENTIAL INFORMATION/NON-PUBLICATION	32
38. PROVISIONS OF LAW DEEMED INSERTED.....	33
39. INVALID CLAUSES.....	33
40. NO ESTOPPEL OR WAIVER.....	34
41. NON-LIABILITY OF THE AUTHORITY REPRESENTATIVES.....	34
42. MODIFICATION OF CONTRACT	34
44. ENTIRE AGREEMENT	35

GENERAL CONTRACT PROVISIONS

1. GENERAL AGREEMENT

The undersigned (hereinafter referred to as the "Contractor" or "you") agrees to provide, and The Port Authority of New York and New Jersey (hereinafter referred to as the "Authority") agrees to accept technology services on a Call-In basis, as more fully set forth in the Scope of Work attached hereto and made a part hereof. The Scope of Work requires the doing of all things necessary or proper for or incidental to the requirements as set forth in the Scope of Work. All things not expressly mentioned in the Scope of Work but involved in carrying out their intent are required by the Scope of Work and the Contractor shall perform the same as though they were specifically mentioned, described and delineated.

2. PAYMENTS

Subject to the provisions of this Contract, the Port Authority agrees to pay to the Contractor and the Contractor agrees to accept from the Port Authority as full and complete consideration for the performance of all its obligations under this Contract and as sole compensation for the Services performed by the Contractor hereunder, a compensation calculated from the actual hours of services performed and the respective unit prices inserted by the Contractor in the Hourly Labor Rate Pricing Sheet(s), forming a part of this Contract.

From time to time a Contractor may be requested to conduct work on a lump sum basis, using the monthly total lump sum Contract prices therefor proposed by the Contractor and accepted by the Port Authority.

The manner of submission of all bills for payment to the Contractor by the Port Authority for Services rendered under this Contract shall be subject to the approval of the 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 Hourly Labor Rate Pricing Sheet(s), 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 Services must be completed within the time frames specified or as designated by the Manager. Contractor shall submit to the 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 Services performed during the preceding month accompanied by such information as may be required by the Manager for verification. The invoice must show the Contractor's Federal Tax Identification Number. Payment will be made within thirty- (30) days of Port Authority verification of the invoice. No certificate, payment, acceptance of any Services or any other act or omission of any representative of the Port Authority shall operate to release the Contractor from any obligation under or upon this Contract, or to estop the Port Authority from showing at any time that such certificate, payment, acceptance, act or omission was incorrect or to preclude the Port Authority from recovering any monies paid in excess of those lawfully due and any damage sustained by the Port Authority.

- b) 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 the Port Authority, the Contractor shall pay to the Port Authority the difference promptly upon receipt of the Port Authority's statement thereof. The Port Authority may, however, in its discretion elect to deduct said sum or sums from any subsequent 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 Contract Term. However should this Contract be terminated for any reason prior to the last month of the Contract 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 the Port Authority of all claims of and of all liability to the Contractor for all things done or furnished in connection with this Contract and for every act and neglect of the Port Authority and others relating to or arising out of this 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.

3. DURATION

The Call-In Program shall be for three (3) years. This Agreement shall commence upon its complete execution and shall terminate at the completion of one (1) year, on the dates and at the times set forth in the Notice of Award. At the Authority's discretion, the Contractor may be required to enter into a new agreement for each of the following two (2) years of the Program, at the same terms and conditions, which agreements shall be identical to this Agreement, unless otherwise mutually agreed upon by the parties.

The term of the Contract shall commence on the date of the Authority acceptance of the Contractor's Proposal and shall terminate on the date three (3) years after the date of the Authority's acceptance of the Contractor's Proposal. However, if a Task Order is issued prior to the date three (3) years after the date of the Authority's acceptance of the Contractor's Proposal that requires Work to be performed after the aforementioned three (3) year period, the Contractor shall perform such Work and the Contract shall continue in full force and effect until the completion of such Task Order.

This Contract may be terminated by the Authority at any time during the term of this Contract. The Authority shall have the right to terminate this Contract or any part thereof, without cause, at any time, upon thirty-(30)-days written notice to the Contractor.

The right of termination described above shall be in addition to any rights and remedies that the Authority would have at law or in equity resulting from the Contractor's breach of this Contract.

4. DEFINITIONS

As used herein, "Director" shall mean the Chief Technology Officer of the Authority acting either personally or through her duly authorized representatives acting within the scope of the particular authority vested in them unless specifically stated to mean acting personally. For the purpose of administering this Agreement, the Director has designated the Project Manager to act as his duly authorized representative.

For the purposes of this Agreement the Project Manager (or "Manager") shall be the individual with day-to-day responsibility for managing the project on behalf of the Port Authority. The Project Manager will be Humberto Cruz, Project Manager, Technology Service Department.

As used herein, the term "days" or "calendar days" in reference to a period of time shall mean consecutive calendar days, Saturdays, Sundays, and holidays included.

"Facility" Port Authority Facilities within the Port District, as set forth in Attachment C: "Port Authority Facilities".

"Services" or "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, as set forth in the Scope of Work.

As used herein, the term "Work Day" shall mean a day between Monday and Friday with Monday and Friday included.

As used herein the term "Specifications" shall mean all requirements of this RFP, technical and otherwise, for the performance of the Scope of Work and services hereunder.

Holidays: The following legal holidays will be observed at Port Authority offices and facilities:

New Year's Day	Columbus Day
Martin Luther King, Jr. Day	Veteran's Day
Presidents Day	Thanksgiving Day
Memorial Day	Day After Thanksgiving
Independence Day	Christmas Day
Labor Day	

Do not perform any Work unless authorized by the Authority on these days.

As used herein, the terms "Port Authority" or "Authority" shall mean the Port Authority of New York and New Jersey.

5. GENERAL PROVISIONS

- A. Under no circumstances shall you or your subcontractors communicate in any way with any department, board, agency, commission, or other organization or any person whether governmental or private in connection with the services to be performed hereunder except upon prior written approval and instructions of the Director, provided, however, that data from manufacturers and suppliers of materials, devices and equipment shall be obtained by you when you find such data necessary unless otherwise instructed by the Authority.
- B. Any services performed for the benefit of the Authority at any time by you or on your behalf, even if expressly and duly authorized by the Authority, shall be deemed to be rendered under and subject to this Agreement (unless referable to another expressly written, duly executed agreement by the same parties), whether such additional services are performed prior to, during or subsequent to the services described herein, and no rights or obligations shall arise out of such additional services except as provided under this Agreement.

- C. The Contractor shall observe and obey (and compel its officers, employees, guests, invitees, and those doing business with it, to observe and obey) the rules and regulations of the Port Authority now in effect, and such further rules and regulations which may from time to time during the effective period of this Contract, be promulgated by the Port Authority for reasons of safety, health, preservation of property, or maintenance of a good and orderly appearance of the Facilities, or for the safe and efficient operation of the Facilities. The Port Authority agrees that, except in cases of emergency, it shall give notice to the Contractor of every rule and regulation hereafter adopted by it.
- D. This Contract does not constitute the Contractor as an agent or representative of the Port Authority for any purpose whatsoever. The Contractor shall perform all services hereunder as an independent Contractor and the Contractor, its officers, and employees shall not be deemed to be agents, servants, or employees of the Port Authority.

6. INTELLECTUAL PROPERTY

- A. Except as provided below: as between the Port Authority and the Contractor all process flows, codes including, but not limited to scripts, programs, routines, processes, procedures, documentation, estimates, reports, records, data, charts, documents, models, designs, renderings, drawings, specifications, photographs, computations, computer tapes or discs, and other documentation of any type whatsoever, whether electronic or in the form of writing, figures or delineations, which are prepared or compiled in connection with this Agreement, shall become the exclusive property of the Authority, and the Authority shall have the exclusive 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 for herein. With regard to training manuals or any other knowledge transfer documentation, communication or presentation prepared under this Agreement the Authority shall expressly have the right to use, alter and reproduce including electronically, said manuals for its internal business purposes. The Contractor hereby warrants and represents that the Authority will have at all times the ownership and rights provided for in the immediately preceding sentence free and clear of all claims of third persons whether presently existing or arising in the future and whether presently known to either of the parties to this Agreement or not. Any information given to the Port Authority before, with or after submission of the Agreement on Terms of Discussion, either orally or in writing, is not given in confidence and may be used, or disclosed to others, for any purpose at any time without obligation or compensation and without liability of any kind whatsoever except as otherwise set forth in the Agreement On Terms Of Discussion.
- B. All preexisting information or documentation including computer programs or code including source code, of the Contractor, utilized by the Contractor hereunder in the performance of his services hereunder shall be deemed licensed to the Authority for the duration and purposes of this agreement, but shall remain the property of the Contractor.
- C. 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 the Authority, the Contractor shall make available to the designated Authority representative all such passwords and codes.
- D. Third party software not specially prepared for the purpose of this agreement but utilized by the Contractor hereunder in the performance of his services hereunder shall be

licensed to the Contractor and the Authority for the duration and purposes of this agreement but shall remain the property of said third party.

- E. The above-described software shall be furnished by the Contractor without additional compensation.

7. PROPRIETY RIGHTS IN SUBJECT MATTER NOT WITHIN THE INTELLECTUAL PROPERTY CLAUSE

If in accordance with this Contract the Contractor furnishes research, development or consultative services in connection with the performance of the Work and if in the course of such research, development, or consultation patentable or copyrightable subject matter or trade secrets or other proprietary matter is produced by the Contractor, its officers, agents, employees, subcontractors, or suppliers, not custom software, and not covered under clause 6 entitled Intellectual Property, the Authority shall have, without cost or expense to it, an irrevocable, non-exclusive, royalty-free license to make, have made, and use, either itself or by anyone on its behalf, such subject matter in connection with any activity now or hereafter engaged in or permitted by the Authority. Promptly upon request by the Authority, the Contractor shall furnish or obtain from the appropriate person a form of license satisfactory to the Authority, but it is expressly understood and agreed that as between the Contractor and the Authority the license herein provided for shall nevertheless arise for the benefit of the Authority immediately upon the production of said subject matter and shall not await formal exemplification in a written license agreement as provided for above. Such license may be transferred by the Authority to its successors, immediate or otherwise, in the operations of or ownership of any facility now or hereafter operated by the Authority or the Authority but such license shall not be otherwise transferable.

The right of the Authority as well as the Contractor to use all patented material, compositions of matter, manufactures, apparatus, appliances, processes of manufacture or types of construction as well as any copyrightable matter, trade secrets or other proprietary matters, shall be obtained by the Contractor without separate or additional compensation whether the same is patented or copyrighted before, during or after the performance of the Work.

8. INDEMNITY IN REGARD TO INFRINGEMENT MATTER

The Contractor shall indemnify the Authority against and save it harmless from all loss and expense incurred in the defense, settlement or satisfaction of any claims in the nature of patent, copyright, or other proprietary rights infringement arising out of or in connection with the Authority's use, in accordance with the preceding clause of such patentable subject matter or patented material, compositions of matter, manufactures, apparatus, appliances, processes of manufacture or types of construction, or copyrighted matter or other matter protected as intellectual property. If requested by the Authority and if notified promptly in writing of any such claims, the Contractor shall conduct all negotiations with respect to and defend such claim without expense to the Authority. If the Authority be enjoined from using any of the facilities which form the subject matter of this Contract, and as to which the Contractor is to indemnify the Authority against proprietary rights claims, the Authority may, at its option and without thereby limiting any other right it may have hereunder or at law or in equity, require the Contractor to supply, temporarily or permanently, facilities not subject to such injunction and not infringing any proprietary rights and if the Contractor shall fail to do so, the Contractor shall, at its expense, remove all such facilities and refund the cost thereof to the Authority and otherwise equitably adjust compensation and take such steps as may be necessary to ensure compliance by the Authority with such injunction, to the satisfaction of the Authority.

The Contractor shall promptly and fully inform the Director of any claims or disputes for infringement or otherwise, whether existing or potential, of which it has knowledge relating to any Intellectual Property used, developed or licensed in connection with the performance of the Work or otherwise in connection with this Contract.

9. COMPLIANCE WITH WEB SITE TERMS OF USE AND PRIVACY POLICIES

Subject to all of the provisions of this Contract including, without limitation, the obligations of the Contractor under the section hereof entitled "Indemnification", the Contractor shall, and shall compel its employees, agents and subcontractors, to strictly abide by and comply with the policies established by the Authority governing the use of the Authority's web sites as set forth in the Authority web sites Terms of Use and Privacy Statement as the same may be supplemented or amended. The Contractor shall immediately implement all procedures in connection with such policies and in furtherance thereof as directed by the Authority.

10. TIME IS OF THE ESSENCE

The Contractor's obligations for the performance and completion of all work within the time or times provided for in this Contract are of the essence of this Contract.

11. FINAL PAYMENT

After satisfactory completion of all services required hereunder, and upon receipt from the Contractor of such information as may be required, the Director shall certify in writing to the Contractor the total compensation earned by the Contractor.

If so required, the Contractor shall thereupon furnish to the Authority a detailed sworn statement of all claims, just and unjust, of subcontractors, materialmen and other third persons then outstanding which he has reason to believe may thereafter be made on account of the services provided under this Agreement.

Within thirty days after issuance of such certificate of total compensation earned (or within thirty days after receipt of the documents provided for in the immediately preceding paragraph, if required and if such date is later), the Port Authority shall pay to the Contractor by check the amount stated in said certificate, less all other payments and advances whatsoever to or for the account of the Contractor. All prior estimates and payments shall be subject to correction in this payment, which is throughout this Agreement called the Final Payment.

The acceptance by the Contractor, or by anyone claiming by or through him, of the Final Payment shall be and shall operate as a release to the Authority of all claims and of all liability to the Contractor for all things done or furnished in connection with this contract and for every act and neglect of the Authority and others relating to or arising out of the this contract, including claims arising out of breach of the contract and claims based on claims of third persons.

The Contractor's agreement as provided in the immediately preceding paragraph shall be deemed to be based upon the consideration forming part of this Contract as a whole and not to be gratuitous; but in any event even if deemed gratuitous and without consideration, such agreement as provided in the immediately preceding paragraph shall nevertheless be effective. Such release shall include all claims, whether or not in litigation and even though still under consideration by the Authority. Such release shall be effective notwithstanding any purported reservation of right by the Contractor to preserve such claim. The acceptance of any check designated as "Final Payment" or bearing any similar designation shall be conclusively presumed to demonstrate the intent of the Contractor that such payment was intended to be accepted as final, with the

consequences provided in this numbered clause, notwithstanding any purported reservation of rights.

The Contractor agrees that he shall not be entitled to, and hereby waives any right he might otherwise have to, and shall not seek any judgment whether under this Contract or otherwise for any such Final Payment or for an amount equivalent thereto or based thereon, or for any part thereof, if such judgment would have the effect of varying, setting aside, disregarding or making inapplicable the terms of this numbered clause or have the effect in any way of entitling the Contractor to accept such Final Payment or an amount equivalent thereto or based thereon or any part thereof other than in the same fashion as a voluntary acceptance of a Final Payment subject to all the terms of this Contract including this numbered clause, unless and until the Contractor should obtain a judgment on any claim arising out of or in connection with this Contract (including a claim based on breach of contract) for an amount not included in said Final Payment.

12. DEFAULT, REVOCATION OR SUSPENSION OF CONTRACT

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

1. If fire or other event shall destroy all or a substantial part of the Facility, asset or infrastructure necessary to perform the Scope of Work.
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 the Port Authority's interest herein;

then upon the occurrence of such event or at any time thereafter during the continuance thereof, the Port Authority 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 reorganization or the 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 Port Authority 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 the Port Authority (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, the Port Authority shall have the right on 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 the Port Authority 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 the Port Authority 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 the Port Authority shall be deemed to be a waiver of the right of the Port Authority to terminate this Contract or of any other right or remedies to which the Port Authority may be entitled because of any breach thereof. No waiver by the Port Authority 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 the Port Authority 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 the Port Authority 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 the Port Authority 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 the Port Authority 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 the Port Authority 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 the Port Authority and the Contractor (including its obligation to 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 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 the Port Authority and the Contractor is made against the Port Authority or (3) any subcontractor under this Contract or any other agreement between 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 the Port Authority and the Contractor or if in the opinion of the Port Authority any of the aforesaid contingencies is

likely to arise, then the Port Authority shall have the right, in its discretion, to withhold out of any payment (final or otherwise) such sums as the Port Authority 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 the Port Authority 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 the Port Authority 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 the Port Authority does not intend to exercise its right with respect to such contingency. Neither the above provisions for rights of the Port Authority to withhold and apply monies nor any exercise or attempted exercise of, or omission to exercise, such rights by the Port Authority 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, the Port Authority 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 the Port Authority has paid any sum or has incurred any obligation or expense which the Contractor has agreed to pay or reimburse the Port Authority, or if the Port Authority 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 the Port Authority the sum or sums so paid or expense so incurred, including all interests, costs and damages, promptly upon the receipt of the Port Authority's statement therefore. The Port Authority may, however, in its discretion, elect to deduct said sum or sums from any payment payable by it to the Contractor.
- J. If the Port Authority 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 the Port Authority any such amount promptly upon receipt of the Port Authority's statement therefore.
- K. The Port Authority 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.

13. WITHHOLDING OF PAYMENT

If (1) the Contractor fails to perform any of its obligations under this Contract or any other agreement between the Authority and the Contractor (including his obligation to the Authority to pay any claim lawfully made against him by any materialman, subcontractor or workman or other person which arises out of or in connection with the performance of this Contract or any other agreement with the Authority) or (2) any claim (just or unjust) which arises out of or in connection with this Contract or any other agreement between the Authority and the Contractor is made against the Authority or (3) any subcontractor under this Contract or any other agreement between the Authority and the Contractor fails to pay any claims lawfully made against him by any materialman, subcontractor, workman or other third person which arises out of on in

connection with this Contract or any other agreement between the Authority and the Contractor or if in the opinion of the Authority any of the aforesaid contingencies is likely to arise, then the Authority shall have the right, in its discretion, to withhold out of any payment (final or otherwise and even though such payment has already been certified as due) such sums as the Authority 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 the Port Authority may deem proper to protect it against delay or loss or to satisfy such claims. All sums so applied shall be deducted from the Contractor's compensation. Omission by the Authority 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 the Authority does not intend to exercise its right with respect to such contingency. Neither the above provisions for rights of the Authority to withhold and apply monies nor any exercise or attempted exercise of, or omission to exercise, such rights by the Authority shall create any obligation of any kind to such materialman, subcontractors, workman or other third persons.

Until actual payment to the Contractor, its right to any amount to be paid under this Contract (even though such amount has already been certified as due) shall be subordinate to the rights of the Authority under this clause.

14. CONTRACTOR PERSONNEL STANDARDS OF PERFORMANCE

The Contractor shall furnish sufficiently trained management, supervisory, technical and operating personnel to perform the services required of the Contractor under this Contract. If, in the opinion of the Director, any of the Contractor's personnel are not satisfactory in the performance of services to be furnished hereunder, the Contractor shall remove such personnel and replace them with personnel satisfactory to the Director.

At the time the Contractor is carrying out its operations there may be other persons working physically in the vicinity or in the same logical or technical infrastructure. . The Contractor shall so conduct its operations as to work in harmony and not endanger, interfere with or delay the operations of others, all to the best interests of The Authority and others and as may be directed by the Director.

15. HIGH SECURITY AREAS

- A. Services under the Contract may be required in high security areas, as the same may be designated by the Manager from time to time. The Port Authority shall require the observance of certain security procedures with respect to the high security 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.
- B. Twenty-four hours prior to the proposed performance of any work in a high security area, the Contractor shall notify the Manager. The Contractor shall conform to the procedures as may be established by the Manager from time to time and at any time for access to high security areas and the escorting of personnel hereunder. Prior to the start of work, the Contractor shall request a description from the Manager of the high security areas which will be in effect on the commencement date. The description of high security areas may be changed from time to time and at any time by the Manager during the term of the Contract.

16. NOTIFICATION OF SECURITY REQUIREMENTS

In case of conflict, the requirements set forth in the Proposal Submission Requirements shall take precedence over the security requirements in this Section.

The Port Authority operates facilities and systems, at which terrorism or other criminal acts may have a significant impact on life safety and key infrastructures. The Authority reserves the right to impose multiple layers of security requirements on the performance of the Contract work, including on the Contractor, its staff and subcontractors and their staffs depending upon the level of security required, as determined by the Authority. The Contractor shall and shall instruct its subcontractors to cooperate with Authority staff in adopting security requirements. These security requirements may include but may not be limited to the following:

i. IDENTITY CHECKS AND BACKGROUND SCREENING

Contractor/subcontractor identity checks and background screening shall include but shall not be limited to: (1) 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; (2) screening of federal, state, and/or local criminal justice agency information databases and files; (3) screening of any terrorist identification files; (4) multi-year check of personal, employment and /or credit history; (5) access identification to include some form of biometric security methodology such as fingerprint, facial or iris scanning.

The Contractor may be required to have its staff, and any subcontractor's staff, authorize the Authority or its designee to perform background checks. Such authorization shall be in a form acceptable to the Authority. If the Authority directs the Contractor to have identity checks and background screening performed by a particular firm designated by the Authority, the Authority will compensate the Contractor for the cost of such screening upon verification by the Port Authority of an invoice submitted by the Contractor therefor.

ii. ISSUANCE OF PHOTO IDENTIFICATION CARDS:

If the Authority requires facility-specific identification cards for the Contractor's and subcontractors' staff, the Authority will supply such identification cards at no cost to the Contractor.

iii. ACCESS CONTROL, INSPECTION, AND MONITORING BY SECURITY GUARDS:

The Authority will provide for facility access control, inspection and monitoring by Authority retained security guards. Should the Authority require the Contractor to hire security guards for the purpose of facility access control and inspection in lieu of or in addition to the Authority retained facility security guards, the Contractor, will be reimbursed for the cost of such security guards upon verification by the Port Authority of an invoice submitted by the Contractor therefor. However, this provision shall not relieve the Contractor of its responsibility to secure its equipment and work at the facility at its own expense.

iv. The Contractor and subcontractors, when appropriate, shall sign Non-Disclosure Agreements (NDAs), or an Acknowledgment of an existing NDA, provided by the Authority as a condition of being granted access to Confidential Information

categorized and protected as per *The Port Authority of New York & New Jersey Information Security Handbook (October 15, 2009, corrected as of February 9, 2009)*.

The Authority may impose, increase, and/or upgrade security requirements for the Contractor, subcontractors and their staffs during the term of this Contract to address changing security conditions and/or new governmental regulations.

17. INSURANCE PROCURED BY THE CONTRACTOR

LIABILITY INSURANCE AND WORKERS' COMPENSATION INSURANCE

A. Commercial Liability Insurance:

1. The Consultant shall take out and maintain at its own expense Commercial General Liability Insurance including but not limited to Premises-Operations, Products-Completed Operations and Independent Contractor coverages in limits of not less than \$5,000,000 combined single limit per occurrence for Bodily Injury Liability and Property Damage Liability. And if vehicles are to be used to carry out the performance of this contract, then the Consultant shall also take out, maintain and pay the premiums on Automobile Liability Insurance covering all owned, non-owned and hired autos in not less than \$5,000,000 combined single limit per accident for bodily injury and property damage. Any/all activities performed airside must, at all times, be performed while under escort as approved in advance, and in writing by the Project Manager. If at any time, the Consultant is directed to perform services airside in the absence of an approved escort, the Commercial General Liability Insurance and Automobile Liability Insurance provided by the Consultant must contain limits of not less than \$25,000,000 combined single limit per occurrence as provided in item 2) (a) below. In addition, the liability policies (other than Professional Liability) shall include the "Port Authority of New York and New Jersey and its related entities" as additional insured and shall contain an endorsement that the policies may not be canceled, terminated or modified without thirty (30) days written advance notice to the Project Manager as noted below. Moreover, the Commercial General Liability policy shall not contain any provisions (other than a Professional Liability exclusion, if any) for exclusions from liability other than provisions or exclusions from liability forming part of the most up to date ISO form or its equivalent, unendorsed Commercial General Liability Policy. The liability policy(ies) and certificate of insurance shall contain cross-liability language providing severability of interests so that coverage will respond as if separate policies were in force for each insured. Furthermore, the Consultant's insurance shall be primary insurance as respects to the above additional insured(s), its representatives, officials, and employees. Any insurance or self-insurance maintained by the above additional insured(s) shall not contribute to any loss or claim. These insurance requirements shall be in effect for the duration of the contract to include any warrantee/guarantee period.

Further, the certificate of insurance and the liability policy(ies) shall be specifically endorsed that "*The insurance carrier(s) shall not, without obtaining the express advance permission from the General Counsel of the Port Authority, raise any defense involving in any way the jurisdiction of the Tribunal over the person of the Port Authority, the immunity of the Port Authority, its Commissioners, officers, agents or employees, the governmental nature of the Port Authority, or the provisions of any statutes respecting suits against the Port Authority*"

2. **Additional Coverages:** The Consultant shall have the policy endorsed when required by the Authority for specific services hereunder and include the additional premium cost thereof as an out-of-pocket expense:
 - a. If the services of the Consultant, as directed by the Authority, require the performance of services airside, the Commercial General Liability and Automobile Liability coverage limits stipulated in subparagraph 1, above, shall be increased to an amount not less than \$25,000,000 per occurrence as provided herein.
 - b. Endorsement to eliminate any exclusions applying to the explosion, collapse and underground property damage (XCU) hazards.
 - c. Endorsement to eliminate any exclusions on account of ownership, maintenance, operation, use, loading or unloading of watercraft.
 - d. Coverage for work within 50 feet of railroad.
- B. Workers' Compensation Insurance:**
1. The Consultant shall take out and maintain at its own expense Workers' Compensation Insurance in accordance with the requirements of law and Employer's Liability Insurance with limits of not less than \$1,000,000 each accident. A waiver of subrogation in favor of the Authority and its related entities, as allowed by law, shall be included.
 2. **Additional Coverages:** The Consultant shall have the policy endorsed when required by the Engineer for specific services hereunder and include the additional premium cost thereof as an out-of-pocket expense:
 - a. United States Longshoremen's and Harbor Workers' Compensation Act Endorsement.
 - b. Coverage B Endorsement - Maritime (Masters or Members of the Crew of Vessels), in limits of not less than \$1,000,000 per occurrence.
 - c. Amendments to Coverage B, Federal Employers' Liability Act in limits of not less than \$1,000,000 per occurrence.
- C. Professional Liability Insurance:**
- The Consultant shall take out and maintain at its own expense a policy of Professional Liability coverage of not less than \$5 million each occurrence, covering acts, errors, mistakes, and omissions arising out of the work or services performed by Consultant, or any person employed by Consultant. All endorsements and exclusions shall be evidenced on the certificate of insurance. The coverage shall be written on an occurrence form or may be written on a claims-made basis with a minimum of a three-year reporting/discovery period.
- D. Compliance:**
- Prior to commencement of work at the site, the Consultant shall deliver a certificate from its insurer evidencing policies of the above insurance stating the title of this Agreement, the P. A. Agreement number and containing a separate express statement of compliance with each of the requirements above set forth, via e-mail to the Project Manager.
1. Renewal certificates of insurance or policies shall be delivered to the Facility Contract Administrator, Port Authority 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 Consultant shall promptly obtain a new and satisfactory certificate and policy.

2. 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, if the Manager shall so direct, the Consultant shall suspend performance of the contract at the premises. If the contract is so suspended, no extension of time shall be due on account thereof. If the contract is not suspended (whether or not because of omission of the Manager to order suspension), then the Authority may, at its option, obtain insurance affording coverage equal to the above required, the cost of such insurance to be payable by the Consultant to the Authority.
3. Upon request of the Manager, Risk Management/Treasury, the Consultant shall furnish to the Authority a certified copy of each policy itself, including the provisions establishing premiums.
4. The requirements for insurance procured by the Consultant shall not in any way be construed as a limitation on the nature or extent of the contractual obligations assumed by the Consultant under this contract. The insurance requirements are not a representation by the Authority as to the adequacy of the insurance to protect the Consultant against the obligations imposed on them by law or by this or any other Contract.
5. The Port Authority may at any time during the term of this agreement change or modify the limits and coverages of insurance. Should the modification or change results in an additional premium, The General Manager, Risk Management for the Port Authority may consider such cost as an out-of-pocket expense.

18. ASSIGNMENTS AND SUBCONTRACTS

Any assignment or other transfer by the Contractor of this Contract or any part hereof or of any of his rights hereunder or of any monies due or to become due hereunder and any delegation of any of his duties hereunder without the express written consent of the Director shall be void and of no effect as to the Authority, provided, however, that the Contractor may subcontract portions of the Work to such persons as the Director, may, from time to time, expressly approve in writing. For each individual, partnership or corporation proposed by the Contractor as a subcontractor, the Contractor shall submit to the Authority a certification or, if a certification cannot be made, a statement by such person, partnership or corporation to the same effect as the certification or statement required from the Contractor pursuant to the clauses of the "Integrity" Section entitled "Certification of No Investigation 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 Fee". All further subcontracting by any subcontractor shall also be subject to such approval of the Director

No consent to any assignment or other transfer, and no approval of any subcontractor, shall under any circumstances operate to relieve the Contractor of any of his obligations; no subcontract, no approval of any subcontractor and no act or omission of the Authority or the Director shall create any rights in favor of such subcontractor and against the Authority; and as between the Authority and the Contractor, all assignees, subcontractors, and other transferees shall for all purposes be deemed to be agents of the Contractor. Moreover, all subcontractors and all approvals of subcontractors, regardless of their form, shall be deemed to be conditioned upon performance by

the subcontractor in accordance with this Contract; and if any subcontractor shall fail to perform the Contract to the satisfaction of the Director, the Director shall have the absolute right to rescind his approval forthwith and to require the performance of the Contract by the Contractor personally or through other approved subcontractors.

19. CERTAIN CONTRACTOR'S WARRANTIES

The Contractor represents and warrants:

- A. That it is financially responsible and experienced in, and competent to perform this Contract; that no representation, promise or statement, oral or in writing, has induced it to submit its Proposal, saving only those contained in the papers expressly made part of this Contract; that the facts stated or shown in any papers submitted or referred to in connection with his Proposal 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, 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 investigations was adequate;
- A. 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;
- B. That no Commissioner, officer, agent or employee of the 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 Authority, its 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, existence or location of materials, structures, obstructions, utilities or conditions, which may be encountered at the installation sites; (3) the nature, quantity, quality or size of the materials, equipment, labor and other facilities needed for the performance of this Contract; (4) the general or local conditions which may in any way affect this Contract or its performance; (5) the price of the Contract; or (6) any other matters, whether similar to or different from those referred to in (1) through (5) 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.
- F. That, notwithstanding any requirements of this Contract, any inspection or approval of the Contractor's services by the Authority, or the existence of any patent or trade name, the Contractor nevertheless warrants and represents that the services and any intellectual property supplied to the Authority hereunder shall be of the best quality and shall be fully fit for the purpose for which they are to be used. The Contractor unconditionally guarantees against defects or failures of any kind, including defects or failures in design, workmanship and

materials, excepting solely defects or failures which the Contractor demonstrates to the satisfaction of the Authority have arisen solely from accident, abuse or fault of the Authority occurring after issuance of Final Payment hereunder and not due to fault on the Contractor's part. In the event of defects or failures in said services, or any part thereof, then upon receipt of notice thereof from the Authority, the Contractor shall correct such defects or failures as may be necessary or desirable, in the sole opinion of the Authority, to comply with the above guaranty.

Moreover, the Contractor accepts the conditions at the sites of 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 Scope of Work or any other part of the Contract is intended as or shall constitute a representation by the Authority as to the feasibility of performance of this Contract or any part thereof. Moreover, the Authority does not warrant or represent either by issuance of the Scope of Work or by any provision of this Contract as to time for performance or completion or otherwise that the Contract may be performed or completed by the times required herein or by any other times.

The Contractor further represents and warrants that it was given ample opportunity and time and by means of this paragraph was requested by the Authority to review thoroughly all documents forming this Contract prior to execution of 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 clause (though not only such provisions) are essential to the Authority's consent to enter into this Contract and that without such provisions; the Authority would not have entered into this Contract.

20. RIGHTS AND REMEDIES OF THE AUTHORITY

The Authority shall have the following rights in the event the Director shall deem the Contractor 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 other Contractors;
- 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 other 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 The Authority indicating that he cannot or will not perform any one or more of his obligations under this Contract; any act or omission of the

Contractor or any other occurrence which makes it improbable at the time that he will be able to perform any one or more of his 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 he will be able to perform any one or more of his obligations under this Contract; any false certification at any time by the Contractor as to any material item certified pursuant to the clauses hereof entitled "Certification of No Investigation (Criminal or Civil Anti-Trust), Indictment, Conviction, Debarment, Suspension, Disqualification and Disclosure of Other Required Information" and "Non-Collusive Bidding and Code of Ethics Certification; Certification of No Solicitation Based on Commission, Percentage, Brokerage, Contingent or Other Fee", or the willful or fraudulent submission of any signed statement pursuant to such clauses which is false in any material respect; or the Contractor's incomplete or inaccurate representation of its status with respect to the circumstances provided for in such clauses.

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

Neither the acceptance of the work or any part thereof, nor any payment therefor, nor any order or certificate issued under this Agreement or otherwise issued by the Authority, or any officer, agent or employee of the Authority, nor any permission or direction to continue with the performance or work, nor any performance by the authority of any of the Contractor's duties or obligations, nor any aid provided to the Contractor by the Authority in his performance of such duties or obligations, nor any other thing done or omitted to be done by the Authority, its Commissioners, officers, agents or employees shall be deemed to be a waiver of any provision of this agreement or of any rights or remedies to which the Authority may be entitled because of any breach hereof, excepting only a resolution of its Commissioners, providing expressly for such waiver. No cancellation, rescission or annulment hereof, in whole or as to any part of the work, because of any breach hereof, shall be deemed a waiver of any money damages to which the Authority may be entitled because of such breach. Moreover, no waiver by the Authority of any breach of this Agreement shall be deemed to be a waiver of any other or any subsequent breach.

21. 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 the Authority, the Contractor expressly agrees that no default, act or omission of the Authority shall constitute a material breach of this Contract, entitling him to cancel or rescind it or (unless the Director shall so direct) to suspend or abandon performance.

22. TAX EXEMPTIONS

Purchases of services and tangible personal property by the Port Authority are exempt from New York and New Jersey state and local sales and compensating use taxes. (Sales Taxes). Therefore, the Port Authority's purchase of the Contractor's services under this Contract is exempt from Sales Taxes. Accordingly, the Contractor must not include Sales Taxes in the price charged to the Port Authority for the contractor's services under this Contract.

23. TITLE TO EQUIPMENT

Title to all equipment to be furnished hereunder by the Contractor shall be transferred to the Authority upon its delivery to the installation site.

The Contractor shall furnish such bills of sale and affidavits of title as the Authority shall reasonably request.

24. NOTICE REQUIREMENTS

No claim against the Authority shall be made or asserted in any action or proceeding at law or in equity, and the Contractor shall not be entitled to allowance of such claim, unless the Contractor shall have complied with all requirements relating to the giving of written notice and of information with respect to such claim as provided in this clause. The failure of the Contractor to give such written notice and information as to any claim shall be conclusively deemed to be a waiver by the Contractor of such claim, such written notice and information being conditions precedent to such claim. As used herein "claim" shall include any claim arising out of this agreement (including claims in the nature of breach of contract or fraud or misrepresentation before or subsequent to execution of this Agreement and claims of a type which are barred by the provisions of this agreement) for damages, payment or compensation of any nature or for performance of any part of this Agreement.

The requirements as to the giving of written notice and information with respect to claims shall be as follows:

- A. In the case of any claims for which requirements are set forth elsewhere in this Agreement as to notice and information, such requirements shall apply.
- B. In the case of all other types of claims, notice shall have been given to the Director, as soon as practicable, and in any case within forty eight (48) hours after occurrence of the act, omission, or other circumstances upon which the claim is or will be based, stating as fully as practicable at the time all information relating thereto. Such information shall be supplemented with any further information as soon as practicable after it becomes or should become known to the Contractor, including daily records showing all costs which the Contractor may be incurring or all other circumstances which will affect any claim to be made which records shall be submitted to the Authority.

The above requirements for notices and information are for the purpose of enabling the Authority to avoid waste of public funds by affording it promptly the opportunity to cancel or revise any order, change its plans, mitigate or remedy the effects of circumstances giving rise to a claim or take such other action as may seem desirable and to verify any claimed expense or circumstance as they occur and the requirements herein for such notice and information are essential to this Agreement and are in addition to any notice required by statute with respect to suits against the Authority.

The above referred to notices and information are required whether or not the Authority is aware of the existence of any circumstances which might constitute a basis for a claim and whether or not the Authority has indicated it will consider a claim.

No, act, omission or statement of any kind shall be regarded as a waiver of any of the provisions of this clause or may be relied upon as such waiver except only either a written statement signed by the Executive Director of the Authority or a resolution of the Commissioners of the Authority expressly stating that a waiver is intended as to any particular provision of this clause, and more particularly, no discussion, negotiation, consideration, correspondence or requests for information with respect to a claim by any

Commissioner, officer, employees or agent of the Authority shall be construed as a waiver of any provision of this clause or as authority or apparent authority to effect such a waiver.

Since merely oral notice or information may cause disputes as to the existence or substance thereof, and since notice, even if written, to other than the Authority representative above designated to receive it may not be sufficient to come to the attention of the representative of the Authority with the knowledge and responsibility of dealing with the situation, only notice and information complying with the express provisions of this clause shall be deemed to fulfill the Contractor's obligation under this Agreement.

25. SERVICE OF NOTICES ON THE CONTRACTOR

Whenever provision is made in this Contract for the giving of any notice to the Contractor, its deposit in any post office box, enclosed in a postpaid wrapper addressed to the Contractor at his/her office, or its delivery to his/her office, shall be sufficient service thereof as of the date of such deposit or delivery, except to the extent, if any, otherwise provided in the clause entitled "Submission to Jurisdiction". Until further notice to the Authority the Contractor's office will be that stated in his/her Proposal. Notices may also be served personally upon the Contractor; or if a corporation, upon any officer, director or managing or general agent; or if a partnership upon any partner.

26. NO THIRD PARTY RIGHTS

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

27. INDEMNIFICATION AND RISKS ASSUMED BY THE CONTRACTOR

To the extent permitted by law, the Contractor shall indemnify and hold harmless the Port Authority, its Commissioners, officers, representatives and employees from and against all claims and demands, just or unjust, of third persons (including employees, officers, and agents of the Port Authority) arising out of or in any way connected 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 under 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 from the acts or omissions of the Contractor, of the Port Authority, of third persons, or from the acts of God or the public enemy, or otherwise, including claims and demands of any local jurisdiction against the Port Authority in connection with this Contract.

The Contractor assumes the following risks, whether such risks arise from acts or omissions (negligent or not) of the Contractor, the Port Authority or third persons or from any other cause, excepting only risks occasioned solely by affirmative willful acts of the Port Authority done subsequent to the opening of proposals on this Contract, and shall to the extent permitted by law indemnify 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 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 the Port Authority, repair, replace or rebuild to the satisfaction of 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 the Port Authority may, at its option, perform any of the foregoing work and the Contractor shall pay to 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 claim, whether made against the Contractor or the Port Authority, 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 just or unjust of third persons arising or alleged to arise out of the performance of work hereunder, whether such claims are made against the Contractor or the Port Authority.

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 General Counsel of the Port Authority, raise any defense involving in any way the jurisdiction of the tribunal over the person of the Port Authority, the immunity of the Port Authority, its Commissioners, officers, agents or employees, the governmental nature of the Port Authority or the provision of any statutes respecting suits against the Port Authority.

Neither the requirements of the Port Authority under this Contract, nor of the Port Authority of the methods of performance hereunder nor the failure of the Port Authority to call attention to improper or inadequate methods or to require a change in the method of performance hereunder nor the failure of the Port Authority 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.

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

Neither the Authority's acceptance of the performance by the Contractor in part or in whole, nor the making of a payment shall release the Contractor from its obligations under this numbered clause.

Moreover, neither the enumeration in this numbered clause nor the enumeration elsewhere in this Contract of particular risks assumed by the Contractor or of particular claims for which it is responsible shall be deemed (a) to limit the effect of the provisions of this numbered clause or of any other clause of this Contract relating to such risks or claims, (b) to imply that it assumes or is responsible for risks or claims only of the type enumerated in this numbered clause or in any other clause of this Contract, or (c) to limit the risks which it would assume or the claims for which it would be responsible in the absence of such enumerations.

28. PORT AUTHORITY TECHNOLOGY STANDARDS AND GUIDELINES AND SUPPLEMENTAL GUIDELINES FOR THE PORT AUTHORITY TECHNOLOGY SERVICES DEPARTMENT

The Contractor and any subcontractors shall follow the Port Authority Technology Standard and Guidelines and the Supplemental Guidelines for the Port Authority Technology Services Department attached hereto and made a part hereof, and shall comply with any updates to or changes in best practices related to such Standards and Guidelines.

29. APPLICABLE LAW

This Contract shall be construed in accordance with the laws of the State of New York. The Contractor hereby consents to the exercise by the courts of the States of New York and New Jersey of jurisdiction in personam over it with respect to any matter arising out of or in connection with this Contract and waives any objection to such jurisdiction which it might otherwise have; and the Contractor agrees that mailing of process by registered mail addressed to it at the address of the Contractor set forth in the Proposal, shall have the same effect as personal service within the States of New York or New Jersey upon a domestic corporation of said State.

30. AUTHORITY OF THE DIRECTOR

Inasmuch as the public interest requires that the Project to which this Contract relates shall be performed in the manner which the Authority, acting through the Director deems best, the Director shall have absolute authority to determine what is or is not necessary or proper for or incidental thereto and the Specifications shall be deemed merely the Director's present determination on this point. In the exercise of this authority, the Director shall have power to alter the Specifications, to require the performance of Work not required by them in their present form, even though of a totally different character from that not required, and to vary, increase and diminish the character, quantity and quality of, or to countermand any Work now or hereafter required. If at any time it shall be, from the viewpoint of the Authority, impracticable or undesirable in the judgment of the Director to proceed with or continue the performance of the Contract or any part thereof, whether or not for reasons beyond the control of the Authority, the Director shall have authority to suspend performance of any part or all of the Contract until such time as the Director may deem it practicable or desirable to proceed. Moreover, if at any time it shall be, from the viewpoint of the Authority impracticable or undesirable in the judgment of the Director to proceed with or continue the performance of the Contract or any part thereof for reasons within or beyond the control of the Authority, the Director shall have authority to cancel this Contract as to any or all portions not yet performed and as to any materials not yet installed even though delivered. Such cancellation shall be without prejudice to the rights and obligations of the parties arising out of portions already satisfactorily performed, but no allowance shall be made for anticipated profits. To resolve all disputes and to prevent litigation, the parties to this Contract authorize the Director to decide all questions of any nature whatsoever arising out of, under, or in connection with, or in any way related to or on account of, this Contract (including claims in the nature of breach of contract or fraud or misrepresentation before or subsequent to acceptance of the Contractor's Proposal and claims of a type which are barred by the provisions of this Contract) and such decision shall be conclusive, final and binding on the parties. The Director's decision may be based on such assistance as she may find desirable. The effect of the decision shall not be impaired or waived by any negotiation or settlement offers in connection with the question decided, whether or not she participated therein, or by any prior decision of her or others, which prior decisions shall be deemed subject to review, or by any termination or cancellation of this Contract.

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

In the performance of the Contract, the Contractor shall conform to all orders, directions and requirements of the Director and shall perform the Contract to her satisfaction at such times and places, by such methods and such manner and sequence as she may require, and the Contract shall at all stages be subject to her inspection. The Contractor shall employ no equipment, materials, methods or men to which she objects, and shall remove no materials, equipment or other facilities from the Authority site without permission. Upon request, she shall confirm in writing any oral order, direction, requirements or determination.

The enumeration herein or elsewhere of particular instances in which the opinion, judgment, discretion or determination of the Director shall control or in which the Contract shall be performed to her satisfaction or subject to her inspection, shall not imply that only the matters of a nature similar to those enumerated shall be so governed and performed, but without exception the entire Contract shall be so governed and performed.

This provision shall be construed in accordance with the laws of the State of New York excluding its conflict of law provisions.

31. APPROVALS BY THE DIRECTOR

The approval by the Director of any service required hereunder, shall be construed merely to mean that at that time the Director knows of no good reason for objecting thereto and no such approval shall release the Contractor from its full responsibility for the satisfactory performance of the services to be supplied. "Approved equal" shall mean approved by the Director.

32. CONTRACT REVIEW AND COMPLIANCE AUDITS

The Contractor, and any subcontractors, shall provide system access and reasonable assistance to the Authority's External and Internal Audit staff or its consultants in their performance of work under the contract, including producing specific requested information, extraction of data and reports. The Contractor, and any subcontractors, shall support requests related to audits of the agreement and administration tasks and functions covered by this Contract.

The Authority reserves the right to use and load security and system software to evaluate the level of security and vulnerabilities in all systems which control, collect, dispense, contain, manage, administer, or monitor revenue "owned" by the Port Authority.

33. AUTHORITY ACCESS TO RECORDS

The Authority shall have access during normal business hours to all records and documents of the Contractor relating to any service provided under this Agreement, amounts for which it has been compensated, or claims he should be compensated, by The Authority above those included in the lump sum compensation set forth elsewhere herein. All Contractor records shall be kept in the Port District. The Contractor shall obtain for The Authority similar access to similar records and documents of subcontractors. Such access shall be given or obtained both before and within a period of three (3) years after Final Payment to the Contractor, provided, however, that if within the aforesaid one year period The Authority has notified the Contractor in writing of a pending

claim by The Authority under or in connection with this Contract to which any of the aforesaid records and documents of the Contractor or of his subcontractors relate either directly or indirectly, then the period of such right of access shall be extended to the expiration of six (6) years from the date of Final Payment with respect to the records and documents involved.

The Contractor shall provide, at no cost to the Authority, access for and reasonable assistance to such auditors from the Authority or the Authority's external auditors that may, from time to time, be designated to audit detail records which support Contractor charges to the Authority. The Authority shall have access to the detail records that support Contractor charges to the Authority for up to three (3) years following the termination of the Contract.

No provision in this Contract giving The Authority a right of access to records and documents is intended to impair or affect any right of access to records and documents that The Authority would have in the absence of such provision.

34. CLAIMS OF THIRD PERSONS

The Contractor undertakes to pay all claims lawfully made against him by subcontractors, materialmen and workmen, and all claims lawfully made against him 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.

35. NO DISCRIMINATION IN EMPLOYMENT, EQUAL EMPLOYMENT OPPORTUNITY

During the performance of this Contract, the Contractor agrees as follows:

- A. The Contractor is advised to ascertain and comply with all applicable Federal, State and Local statutes, ordinances, rules and regulations and Federal Executive Orders pertaining to equal employment opportunity, affirmative action and non-discrimination in employment.
- B Without limiting the generality of any other term or provision of this Contract, in the event of the Contractor's non-compliance with any such statutes, ordinances, rules, regulations or orders, this Contract may be canceled, terminated, or suspended in whole or in part.

36 CONTRACTOR'S INTEGRITY PROVISIONS

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

1. By bidding on this Contract, each Proposer and each person signing on behalf of any Proposer certifies, and in the case of a joint bid each party thereto certifies as to its own organization, that the Proposer and each parent and/or affiliate of the Proposer 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 Proposer;
- 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 \$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.

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 Proposer and each person signing on behalf of any Proposer 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 Proposer 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 Proposer prior to the official opening of such bid to any other Proposer or to any competitor;
- c. no attempt has been made and none will be made by the Proposer 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 April 11, 1996, (a copy of which is available upon request to the individual named in the clause hereof entitled "Proposer's Questions"), 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 Proposer for the purpose of securing business, has been employed or retained by the Proposer 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 Proposer 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 Proposer 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 shall be deemed to be made by the Proposer as follows:

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

Moreover, the foregoing certifications, if made by a corporate Proposer, shall be deemed to have been authorized by the Board of Directors of the Proposer, 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 Proposer cannot make the foregoing certifications, the Proposer shall so state and shall furnish with the signed bid a signed statement that sets forth in detail the reasons therefor. If the Proposer 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 Proposer 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 Director 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-responsibility.

Notwithstanding that the Proposer may be able to make the foregoing certifications at the time the bid is submitted, the Proposer shall immediately notify the Authority in writing during the period of irrevocability of bids on this Contract of any change of circumstances which might under this clause make it unable to make the foregoing certifications or require disclosure. The foregoing certifications or signed statement shall be deemed to have been made by the Proposer with full knowledge that they would become a part of the records of the Authority and that the Authority will rely on their truth and accuracy in awarding this Contract. In the event that the Authority should determine at any time prior or subsequent to the award of this Contract that the Proposer has falsely certified as to any material item in the foregoing certifications 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 Proposer is not a responsible Proposer 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, Proposers 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.). Proposers are also advised that the inability to make such certification will not in and of itself disqualify a Proposer,

and that in each instance the Authority will evaluate the reasons therefor provided by the Proposer. Under certain circumstances the Proposer 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 Proposer 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. Proposer Eligibility for Award of Contracts - Determination by an Agency of the State of New York or New Jersey Concerning Eligibility to Receive Public Contracts

Proposers 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 Proposer is not eligible to bid on or be awarded public contracts because the Proposer has been determined to have engaged in illegal or dishonest conduct or to have violated prevailing rate of wage legislation.

The policy permits a Proposer 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 Proposer, or (ii) the state agency determination relied upon was made without affording the Proposer the notice and hearing to which the Proposer 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. No Gifts, Gratuities, Offers of Employment, Etc.

During the term of this Contract, 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 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 April 11, 1996, (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.

5. 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 Director in writing of such situation giving the full details thereof. Unless the Contractor receives the specific written approval of the Director, the Contractor shall not take the contemplated action which might be viewed as or give the appearance of a conflict of interest. In the event the Director 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 Director to be no longer appropriate because of such preclusion, then the Director 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.

III. 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 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 Proposer by whatever titles known.

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

If the solicitation is a Request for Proposal:

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

In a Contract resulting from the taking of bids:

Bid - shall mean bid;
Proposer - shall mean Proposer;
Bidding - shall mean executing this Contract.

In a Contract resulting from the taking of Proposals:

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

37. 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. Confidential information shall also mean and include collectively, as per *The Port Authority of New York & New Jersey Information Security Handbook (October 15, 2008, corrected as of February, 9 2009)*, 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 confidential 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 the Port Authority or to the fact that goods have been, are being or will be provided to it and/or that services have been, are being or will be performed for it in connection with this Agreement, unless the vendor first obtains the written approval of the Port Authority. Such approval may be withheld if for any reason the Port Authority believes that the publication of such information would be harmful to the public interest or is in any way undesirable.

38. 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.

39. 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.

40. NO ESTOPPEL OR WAIVER

The Authority shall not be precluded or estopped by any acceptance, certificate or payment, final or otherwise, issued or made under this Contract or otherwise issued or made by it, the Director or any officer, agent or employee of The Authority, from showing at any time the true amount and character of Work performed, or from showing that any such acceptance, certificate or payment is incorrect or was improperly issued or made; and The Authority shall not be precluded or estopped, notwithstanding any such acceptance, certificate or payment, from recovering from the Contractor any damages which it may sustain by reason of any failure on his part to comply strictly with this Contract, and any monies which may be paid to him or for his account in excess of those to which he is lawfully entitled.

41. NON-LIABILITY OF THE AUTHORITY REPRESENTATIVES

Neither the Commissioners of the Authority, nor any officer, agent, or employee thereof shall be charged personally by the Contractor with any liability or held liable under any term or provision of this Contract, or because of its execution or attempted execution, or because of any breach hereof.

42. MODIFICATION OF CONTRACT

No change in or modification, termination or discharge of this Contract, in any form whatsoever, shall be valid or enforceable unless it is in writing and signed by the party to be charged therewith or his duly authorized representative, provided, however, that any change in or modification, termination or discharge of this Contract expressly provided for in this Contract shall be effective as so provided.

43. M/WBE GOOD FAITH PARTICIPATION

If specified as applicable to this Contract, the Contractor shall use every good-faith effort to provide for participation by certified Minority Business Enterprises (MBEs) and certified Women-owned Business Enterprises (WBEs) as herein defined, in all purchasing and subcontracting opportunities associated with this Contract, including purchase of equipment, supplies and labor services.

Good Faith efforts to include participation by MBEs/WBEs shall include 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 MBEs/WBEs as may be appropriate.
- c. Soliciting services and materials, to be procured, from the Directory of MBEs/WBEs, a copy of which can be obtained by contacting the Port Authority's Office of Business and Job Opportunity at (212) 435-7819 or seeking MBEs/WBEs from other sources.
- d. Insuring that provision is made to provide progress payments to MBEs/WBEs on a timely basis.
- e. Observance of reasonable commercial standards of fair dealing in the respective trade or business.

Either prior or subsequent to Contract award, the Contractor may request a full or partial waiver of the M/WBE participation goals set forth in this Contract by providing documentation

demonstrating to the Manager, for approval by the Port Authority's Office of Business and Job Opportunity, that its good faith efforts did not result in compliance with the goals set forth above because participation by eligible M/WBEs could not be obtained at a reasonable price or that such M/WBEs were not available to adequately perform as subcontractors. The Contractor shall provide written documentation in support of its request to the Manager. The documentation shall include, but not be limited to, documentation demonstrating good faith efforts as described above, which may include, proof that the Authority's directory does not contain M/WBEs in this specific field of work, a list of organizations contacted to obtain M/WBEs, and/or a list of M/WBEs contacted and their price quotes. If approved by the Authority's Office of Business and Job Opportunity, the Manager will provide written approval of the modified or waived M/WBE Participation Plan.

Subsequent to Contract award, all changes to the M/WBE Participation Plan must be submitted via a modified M/WBE Participation Plan to the Manager for review and approval by the Authority's Office of Business and Job Opportunity. For submittal of modifications to the M/WBE Plan, Contractors are directed to use form PA3749C, which may be downloaded at http://www.panynj.gov/DoingBusinessWith/contractors/html/other_info.html. The Contractor shall not make changes to its approved M/WBE Participation Plan or substitute M/WBE subcontractors or suppliers for those named in their approved plan without the Manager's prior written approval. Unauthorized changes or substitutions, including performing the work designated for a subcontractor with the Contractor's own forces, shall be a violation of this section. Progress toward attainment of M/WBE participation goals set forth herein will be monitored throughout the duration of this Contract.

The Contractor shall also submit to the Manager, along with invoices, the Statement of Subcontractor Payments as the M/WBE Participation Report, annexed hereto as Attachment G1. The Statement must include the name and business address of each M/WBE subcontractor and supplier actually involved in the Contract, a description of the work performed and/or product or service supplied by each such subcontractor or supplier, the date and amount of each expenditure, and such other information that may assist the Manager in determining the Contractor's compliance with the foregoing provisions.

If, during the performance of this Contract, the Contractor fails to demonstrate good faith efforts in carrying out its M/WBE Participation Plan and the Contractor has not requested and been granted a full or partial waiver of the M/WBE participation goals set forth in this Contract, the Authority will take into consideration the Contractor's failure to carry out its M/WBE Participation Plan in its evaluation for award of future Authority contracts.

44. ENTIRE AGREEMENT

This Contract including the Request for Proposals for # (including its Scope of Works and other attachments, endorsements and exhibits, if any,) as well as the Proposal submitted by the Contractor contains the entire agreement between the parties. In the event of any inconsistency between this Contract and other attachments, endorsements and exhibits, if any, including the Proposal submitted by the Contractor, this Contract shall be controlling.