

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: September 23, 2013

TITLE: INDEFINITE QUANTITY CONTRACT (IQC) FOR EXPERT PROFESSIONAL ARCHITECTURAL AND ENGINEERING SERVICES FOR THE DESIGN OF FEDERALLY FUNDED SUPER STORM SANDY RELATED REPAIR AND RESILIENCY PROJECTS ON AN “AS NEEDED” BASIS DURING 2013 - 2017

RFP NO.: 34575

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

QUESTIONS DUE BY: October 8, 2013 TIME: 2:00 P.M.

PROPOSAL DUE DATE: October 15, 2013 TIME: 2:00 P.M.

CONTACT: PETER STAPLES

PHONE: (212) 435-5694

FAX: (212) 435-5116

EMAIL: pstaples@panynj.gov

September 23, 2013

SUBJECT: REQUEST FOR PROPOSAL FOR PERFORMANCE OF EXPERT PROFESSIONAL ARCHITECTURAL/ENGINEERING INDEFINITE QUANTITY SERVICES CONTRACT (IQCs) FOR THE DESIGN OF FEDERALLY FUNDED SUPERSTORM SANDY RELATED REPAIR AND RESILIENCY PROJECTS ON AN “AS-NEEDED” BASIS DURING 2013 THRU 2017

RFP NO.: 34575

Dear Sir or Madam:

The Port Authority of New York and New Jersey (“Authority” or “Port Authority”) is seeking Proposals from prospective Consultants (also “You,” “Firm,” and “Proposer”) (collectively, “Parties”) in response to this Request for Proposals (RFP) for the Performance of Expert Professional Architectural/Engineering Services (“Services”) for the Design of Federally Funded Super Storm Sandy Related Repair and Resiliency Projects on an “As Needed Basis.” The Scope of the Services is set forth in “Attachment A – Scope of Services”, attached hereto and made a part hereof. Individual architectural and engineering tasks have not yet been determined, but will be defined under individual competitive Task Orders.

A sample of the Agreement is attached hereto and made a part hereof. Please review the Agreement, which will be the basis for the submission of proposals, and which you will sign in the event the Authority accepts your Proposal. You are expected to agree to all of the terms and conditions of the Agreement. You should therefore not make any changes to, or restate any of its provisions in your Proposal or supporting material. However, if you have any specific exceptions, such exceptions should be set forth in a separate letter included with your response to this RFP. The Authority is under no obligation to entertain or accept any such specific exceptions. After the Proposal Due Date, the Proposer will be precluded from raising any exceptions to this RFP.

It is envisaged that a minimum of three (3) IQC Agreements will be awarded for **Group 1** (Aviation, Tunnels, Bridges and Terminals (TB&T), and Port Commerce), and the same for **Group 2** (PATH). The Firm/Consultant shall perform professional architectural/engineering design services for the rehabilitation, repair and resiliency projects and shall have available the services of individuals knowledgeable in each discipline listed below as may be required by the Port Authority Line Departments as identified in **Groups 1 and 2** above. The Firm/Consultant experience and staff qualifications required shall include but not be limited to those required in the practice of the following disciplines:

- A. Architecture;
- B. Civil Engineering;
- C. Electrical Engineering (Power and Electronics);
- D. Environmental Engineering;

- E. Geotechnical Engineering;
- F. Mechanical Engineering (HVAC, Plumbing and Fire Protection);
- G. Structural Engineering; and
- H. Traffic Engineering

The various IQC Agreements and resulting competitive Task Orders will be awarded to Firms/Consultants using the Brooks Act method of procurement, while ensuring compliance with requirements of the Federal Transit Administration (FTA), Federal Emergency Management Agency (FEMA), and other Federal grantors.

It is anticipated that the total number of Task Orders awarded for Group 1 will be approximately \$60 million. Likewise, the total number of Task Orders for Group 2 will be approximately \$240 million. The actual number of firms selected in each category shall be determined as a result of the final overall technical score of each proposer, as recommended by the Evaluation Committee. The actual number may be expanded if the Evaluation Committee determines that separate lists in any one or more line areas will better serve the Port Authority.

Upon determining the value of the scope of work for the first Task Order, the Authority shall request proposals from the appropriate number of selected firms (holding IQC Agreements under the respective Group(s) or Line Departments) as follows:

<u>Task Order Value</u>	<u>Minimum # of Proposals Requested</u>
<\$1M	3
=>\$1M / <\$5M	6 (if number of selected firms is 6 or more in the appropriate category, if less than 6 firms the entire list will be solicited)
=>\$5M	Entire Category(ies) list as appropriate

RFP Contents

Request for Proposal Cover Letter
Attachment A: Scope of Services
Attachment B: Agreement on Terms of Discussion
Attachment C-1: Proposer Pre-requisite A
Attachment C-2: Proposer Pre-requisite B
Attachment D: DBE Program Requirements & Attachments
Attachment F: Insurance Requirements
Attachment G: Contractor Quality Program Requirements
Attachment J: Federal Transit Administration Provisions
Attachment K: FEMA Provisions
Port Authority Standard Agreement

I. SUBMISSION OF PROPOSALS:

To respond to this RFP, the Proposer shall submit a concise Proposal in accordance with the following requirements:

- A. The Proposal should not be more than 50 pages (double-sided) using 12 point or greater font size), not including resumes and attachments. For each discipline, include a chart with staff names, education, and affiliation (e.g. Professional Engineer/P.E.) in the left column and the Current Responsibilities/Background (e.g. “20 years in various Engineering disciplines prior to joining management team”) is in the right column. The Proposal pages shall be numbered and bound or in a 3-ring binder, with “Firm Name” and **RFP Number 34575** clearly indicated on the cover.
- B. Each section of the Proposal shall be separated with a tab divider that is labeled in accordance with the letter of the requirements specified in Section V below (“Proposal Submission Requirements.”).
- C. All proposals must be delivered in sealed envelopes and/or packages. Address Proposal to: The Port Authority of New York and New Jersey, Procurement Department, Two Montgomery Street, 3rd Floor, Jersey City, NJ 07302, **Attention: RFP Custodian. Do not address your Proposal to any other name.** Submit one **reproducible original** and five copies, along with five compact disc copies of your Proposal for review. Notwithstanding submission of the compact disc, in case of inconsistency, the reproducible original of the Proposal and the written hard copy agreement, if awarded, shall take precedence over material on the compact disc.
- D. The Proposer should use its **full legal name without abbreviations** in its submission to the Authority, including on any return address label, in information on the compact disc and in the reproducible original and copies of the Proposal. It is the responsibility of the Proposer to properly label all submissions, as mislabeling may lead to delays in Agreement award and subsequent Task Order payments.
- E. Provide the address of your Firm to which any written correspondence should be sent, as well as a contact name with phone number and email address.
- F. Allow sufficient time for delivery of your sealed Proposal so that the Authority receives it **no later than 2:00 P.M. on October 15, 2013** (“Proposal Due Date”). **The cover of your submittal and packaging must include the RFP Number (as stated above) and the RFP title.** The Authority assumes no responsibility for delays caused by any delivery services.
- G. The Authority will not accept Proposals submitted via electronic mail or fax.
- H. If your Proposal is to be delivered by messenger, please note that only individuals with valid photo identification will be permitted access to the Authority’s offices. Messengers without valid identification will be turned away and their packages not accepted.
- I. Under this solicitation, Firms/Consultants will be required to submit separate proposals for each Group (**Group 1** or **Group 2**). Firms/Consultants may submit proposals for **Group 1** only, **Group 2** only or both. Additionally, under **Group 1**, Firms/Consultants must submit an “all inclusive” proposal, meaning that all Line Departments within this Group must be included. As stated above, Group 1 may be divided into up to three separate lists if it is deemed by the Evaluation Committee to be in the best interest of the Authority to do so.

- J. In addition to the listing of major disciplines required as identified above, the Firms/Consultants at a minimum, must provide the following Firm/Staff experience as part of each Line Department proposal:

AVIATION (Group 1)

- Aeronautical Lighting and Power Distribution
- Runways/Taxiways
- Stormwater Drainage Systems

TB&T (Group 1)

- Tunnel Drainage
- Emergency Power
- NFPA502 requirements

PORT COMMERCE (Group 1)

- Monopiles
- Piers
- Shoreline Reconstruction
- Dredging

PATH (Group 2)

- Rail
- Traction Power
- Tunnel Drainage

- K. As part of the RFP Proposal submission, the Firm/Consultant shall submit your Quality Control/Assurance Program for performance of the services contemplated hereunder.

II. PROPOSER PREREQUISITES:

Only Proposals from Firms demonstrating previous experience in the performance of services similar to those contemplated herein will be considered.

Only Firms which can demonstrate that they comply with the following prerequisites should submit Proposals, as only Proposals from such Firms will be considered:

- A. A minimum of five years experience per firm, from the date of proposal submission performing Architectural/Engineering design services for transportation facilities within the Line Department/Category(ies) specified. Experience shall include for **Group 1:** Aviation, Tunnels, Bridges/Terminals and Port Commerce inclusive, and **Group 2** Railroads; and
- B. Gross annual revenues of not less than \$5M per year for each of the last five (5) years, from the date of proposal submission in the performance of Architectural and Engineering design services.

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 subparagraphs (A), and (B) above, the prerequisites will be considered satisfied if the Joint Venture itself, or any of its participants individually, meet the requirements.

If a Joint Venture which has not been established as a distinct legal entity submits a proposal, it and all participants in the Joint Venture shall be bound jointly and severally and each participant in the Joint Venture shall execute the proposal and do each act and thing required by this Request For Proposals.

If the Joint Venture is a distinct legal entity, the name of the Joint Venture Proposer shall appear on the original proposal and wherever else the Proposer's name would appear.

If the Proposer is a Common Law Joint Venture, the names of all participants shall be listed 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. "Attachment C-1 - Proposer Pre-requisites Item A" and "Attachment C-2 - Proposer Prerequisites Item B" should be completed and submitted as part of the Proposal to document the required experience. By furnishing this solicitation document to Proposers, the Port Authority has not made a determination that any Proposer has met the prerequisites or has otherwise been deemed qualified to perform the Services. A determination that a Proposer meets these requirements is no assurance that the Proposer will be selected for performance of the subject services. Firms that do not meet these requirements shall not be further considered. The Authority shall be the sole judge of whether a Proposer meets the prerequisite requirements.

III. FINANCIAL INFORMATION

The Proposer shall be required to demonstrate that it is financially capable of performing the required Services if awarded an 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 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 calendar year or the Proposer's most recent fiscal year.
- (2) Where the certified financial statements in (1) above are not available, then reviewed statements from an independent Certified Public Accountant setting forth the aforementioned information shall be provided.

Where the statements submitted pursuant to subparagraphs (1) and (2) above 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 is at least as good as that shown on the statements submitted.

- B. A statement of work which the Proposer has on hand, 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 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.

IV. EVALUATION CRITERIA

Award shall be made following the Federal Brooks Act qualifications based selection process. The qualifications-based selection shall take into consideration the technical qualifications presented below which are listed in relative order of importance. After consideration of these factors, the Authority will seek to short list proposals and will proceed with recommending awards of IQC Agreements for **Groups 1 and 2**.

- Staff Qualifications and Experience;
- Firm Qualifications and Experience;
- Management Approach.

Cost Proposals shall **NOT** be submitted with technical Proposals under this solicitation. Award of Indefinite Quantity Contract(s) will be qualifications based, and made to firms judged to have submitted the highest technically qualified proposals.

V. PROPOSAL SUBMISSION REQUIREMENTS

To respond to this RFP, proposers must provide the following information:

In the front of your Proposal, provide a copy of "Attachment B - Agreement on Terms of Discussion," signed by an Officer of your Firm. If the Proposer is a joint venture, an Officer of each member of the joint venture shall sign the Agreement.

Demonstrate your compliance with the proposer prerequisites listed above by providing "Attachments C-1 and C-2." Only proposals that meet the prerequisites outlined in Section II above entitled "Proposer Prerequisites," will be evaluated based on the criteria outlined in Section IV – Evaluation Criteria. To ensure that proposals are properly evaluated, proposers, at a minimum, must address the following:

A. STAFF QUALIFICATIONS AND EXPERIENCE

List the name(s) and title(s) of key personnel who would be assigned to perform any of the services requested under an awarded Task Order. Detail the experience of any key individuals and attach a detailed resume for each that includes his or her educational background, chronological history of employment, relevant licenses and certifications. The resumes should clearly identify the years of experience and technical capabilities in the field related to the tasks for which the individual will be responsible.

Indicate how you will ensure commitment to the project of said key personnel and your plan for providing equally qualified personnel in the event that such key personnel become unavailable during the progress of the work. However, notwithstanding the aforementioned required plan, note that it is expected that key personnel submitted under this Request for Proposal will be committed to being assigned to any awarded Task Order for its duration. The Consultant shall not remove or replace the Project Manager or any other key personnel, as identified by the Authority, without the written consent of the

Authority and the Authority will not consent until the Consultant has proffered a candidate with similar and equal credentials acceptable to the Authority.

Identify subconsultants, if any, and indicate their experience and qualifications. Provide the terms and conditions for their compensation, their DBE status and the technical qualifications of their key personnel.

B. FIRMS QUALIFICATIONS AND EXPERIENCE

Demonstrate your compliance with the proposer prerequisites listed above by providing Attachments C-1 and C-2.

In a concise narrative form, demonstrate your Firm's specific relevant experience in the performance of services similar to those contemplated herein. For all projects referenced, the services must have been performed by the Proposer within the last five years or must be currently being performed by the Proposer. The information outlining the services performed or currently being performed shall include:

- The name, address, point of contact and telephone number(s) of the Contracting party;
- Locations where the work was performed;
- Duration of the Contract;
- Date(s) the services were provided;
- The approximate dollar amount of the Contract;
- The annual staff hours of full and part time labor expended in the performance of the services under the Agreement;
- A summary of the types of work performed; and
- Representatives familiar with the work that the Port Authority may contact.

Only Proposals received from Firms/Consultants demonstrating relevant prior experience will be evaluated for performance of the subject services.

C. MANAGEMENT APPROACH

Submit a detailed description of the proposed management approach to be taken for the administration of the IQC Agreement and the contemplated scope of services to be awarded under each Task Order covering the tasks listed in Attachment A. Include an organization chart. In support, the Proposer shall also provide:

1. A tracking system for deliverables, controlling costs and meeting management (organizing meetings, determining agendas, writing and distributing meeting minutes and monitoring the progress of action items agreed upon in meetings, etc.);
2. Procedures for keeping the Authority informed of issues and progress during project performance; and
3. Approach to Quality Control/Quality Assurance.

Submit a detailed description of the proposed technical approach to be taken for the performance of the IQC services. Factors shall include but are not limited to your methods for selecting, proposing and retaining the various disciplines noted above. In

addition, demonstrate the knowledge and skill of your firm to address specific technical areas.

D. DBE PARTICIPATION

This Agreement is subject to the United States Department of Transportation regulations on Disadvantaged Business Enterprises (DBE's) contained in Part 26 of Title 49 of the Code of Federal Regulations.

The following goal for DBE participation has been set for this Contract at **seventeen percent (17%)**:

Eligible DBE firms are listed on the following Uniform Certification Programs (UCPs) websites:

New York UCP – <http://www.nysucp.net/>

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

By proposing on this RFP, the firm assures the Authority that it will meet the foregoing goal and shall submit the DBE Goals Statement form (Appendix D-1) with each IQC. If the firm determines it cannot make this assurance, it may nevertheless submit a proposal but in such event, it shall note on the DBE Goals Statement form the percentage of DBE participation it anticipates, including documentation supporting the good faith efforts made to achieve the goals set forth in the Agreement.

The firm shall submit with its Proposal the DBE Participation Plan and Affirmation Statement (Appendix D-2) for each DBE firm it intends to use on this Agreement. Upon award of a Task Order, the DBE Participation Plan and Affirmation Statement shall be provided with the name and address of each DBE firm, a description of the work to be performed, the dollar value of each DBE subcontract and the signature affirmation from each DBE firm participating in this Agreement.

A firm who fails to meet the DBE goal for each Task Order and fails to demonstrate to the Authority that the firm has made good faith efforts to meet such goals, shall not be eligible to be awarded the Task Order. The following are illustrative of good faith efforts:

1. Attendance at a pre-bid meeting, if any, scheduled by the Authority to inform DBEs of subcontracting opportunities under a given solicitation;
2. Advertisement in general circulation media, trade association publications, and minority-focused media for at least 20 days before bids or proposals are due. If 20 days are not available, publication for a shorter reasonable time is acceptable;
3. Written notification to DBEs that their interest in the Task Order is solicited;
4. Efforts made to select portions of the work proposed to be performed by DBEs in order to increase the likelihood of achieving the stated goal;
5. Efforts to negotiate with DBEs for specific sub-bids including at a minimum;
 - a. The names, addresses, and telephone numbers of DBEs that were contacted;
 - b. A description of the information provided to DBEs regarding the plans and specifications for portions of the work to be performed; and
 - c. A statement of why additional agreements with DBEs were not reached;

E. PROVIDE A COMPLETE LIST OF YOUR FIRM'S AFFILIATES

F. PROPOSER'S INTEGRITY PROVISIONS

If your Firm is selected for performance of the subject services, the agreement you will be asked to sign will include clauses entitled "Certification of No Investigation (Criminal Or Civil Anti-Trust), Indictment, Conviction, Debarment, Suspension, Disqualification and Disclosure Of Other Information" and "Non-Collusive Proposing, and Code Of Ethics Certification; Certification of No Solicitation Based On Commission, Percentage, Brokerage, Contingent or Other Fees". By submitting a Proposal, the Consultant shall be deemed to have made the certifications contained therein unless said Consultant submits a statement with its Proposal explaining why any such certification(s) cannot be made. Such a submission shall be submitted in a separate envelope along with your Proposal, clearly marked "CERTIFICATION STATEMENT".

G. BACKGROUND QUALIFICATIONS QUESTIONNAIRE

The Proposer shall submit a completed Background Qualifications Questionnaire (BQQ), as required for all consultants, subconsultants, contractors and vendors providing services at the World Trade Center Site. This document and instructions for submitting the completed BQQ to the Authority's Office of Inspector General can be obtained at the Authority's website through the following link:

<http://www.panynj.gov/inspector-general/inspector-general-programs.html>

A BQQ is also to be submitted for any subcontractor, subconsultant or vendor known to the Proposer at the time of Proposal submission.

H. GENERAL CONFLICT OF INTEREST

If the Proposer or any employee, agent or subconsultant 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 and shall submit a mitigation plan addressing said conflict.

It is envisioned and recommended that the following items/concepts be addressed in a proposed mitigation plan where a conflict or the appearance of a conflict of interest may in the future, or does currently exist:

1. A proposed organizational chart/structure/firewall designed to keep staff and resources separate, as specific by project, and to allow for no overlap between team members and resources, including, but not limited to: equipment, materials, staffing, laydown areas, and office facilities on said projects.
2. Specific plan(s) intended to maintain the separation and integrity, as specific by project, of the following to include, but not be limited to: confidential and/or privileged information, documents, plans, drawings, estimates and other financial data.
3. Specific plan to maintain proper and independent billing procedure(s) designed to address the avoidance of double and improper billings.
4. Specific plan to educate employees, on all levels, of the importance of said mitigation plan to promote the awareness and importance of mitigation and its role in preventing

fraud waste, and abuse, and verification of such education/training and individual understanding.

5. Specific plan to internally oversee and/or audit the above-listed plans and procedures to ensure compliance.
6. Specific contingency plan, notification, and approval process for cases where there is a necessary, reasonable and business related purpose for overlap in and/or sharing of staff members and/or resources.
7. Specific contingency plan addressing any direct or suspected violation of said mitigation plan. All violations must be reported to the Port Authority, including its Inspector General.
8. The Consultant shall ensure that any subconsultant/subcontractor must cooperate with the Port Authority's Inspector General and its Integrity Monitor, in auditing the mitigation plan for compliance. This cooperation must include access to all necessary documentation and interviews of employees.

The Authority reserves the right to disqualify the Proposer if, in the Authority's sole discretion, any interest disclosed from any source could create a conflict of interest or give the appearance of a conflict of interest. The Authority's determination regarding any questions of conflict of interest will be final.

As used herein, "Integrity Monitor" shall mean a private firm hired to assist the Office of Inspector General in preventing and detecting fraud. There are two applications for an integrity monitor. First, an integrity monitor is assigned to prevent or detect fraud on a specific project - for example, all Port Authority projects at the World Trade Center site have an integrity monitor. Second, the Port Authority has required firms with integrity issues to retain at their own cost an Office of Inspector General-approved integrity monitor as a condition of being awarded Agreements.

I. 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 Consultant.
 - a. The Consultant shall have access to confidential and/or sensitive Authority information in the course of Agreement performance. Additionally, the Consultant may be granted access to proprietary information obtained from other contracted entities during Agreement performance. The Consultant agrees to protect all such information from disclosure even after agreement expiration or termination unless so authorized, in writing, by the Authority and to refrain from using such information for any purpose other than that for which it was furnished.
 - b. To the extent that the Consultant either (i) uses confidential and/or sensitive Authority information or proprietary information obtained from other Authority contractors/firms to develop any form of document, report, or plan that is determined by the Authority to be the basis, in whole or in part, of any subsequent solicitation issued by the Authority or (ii) develops written specifications that are used in any subsequent solicitation issued by the Authority, the Consultant 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 Authority issues, 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 IQC for which the Consultant was ineligible to complete.

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

VI. ORAL PRESENTATIONS

After review of all Proposal submissions, an oral presentation to the selection committee and others, as appropriate, may be requested by the Authority. It should be noted that Proposers selected to make presentations *may* be given only short advance notice. Presentations will be limited to 30 minutes and should include the material contained in their Proposal. The presentation will be followed by an approximately 30 minute question and answer session. It will be at the Proposer's discretion as to who leads the oral presentation; however, the lead presenter shall be supported by no more than five (5) staff members who are proposed to work on this project. Notification of presentation scheduling will be made by e-mail. Please provide the name and email address of the person who should be contacted for presentation scheduling as well as an alternate contact person in the event that the primary contact person is unavailable.

VII. ADDITIONAL INFORMATION:

It is Authority policy that its Consultants 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.

Your attention is also directed to Section 22 of the Authority's Standard Agreement regarding nondisclosure/confidentiality agreements.

After a review of all Proposals received, the Authority will forward two copies of the Standard Agreement and Attachment A thereto to each selected Firm, which shall sign and

return both copies. The return of one copy executed by the Authority will effectuate the Agreement.

Should you have any questions, please e-mail them to Mr. Peter Staples at pstaples@panynj.gov. **All such emails must have “RFP Number 34575” in the subject line.** All questions should be submitted no later than 2:00 P.M. (EST) on October 8, 2013. Neither Mr. Staples nor any other employee of the Authority is authorized to interpret the provisions of this RFP or accompanying documents or to give additional information as to its requirements. If interpretation or additional information is required, it will be communicated by written addendum issued by the Authority and such writing shall form a part of this RFP, or the accompanying documents, as appropriate. Proposers should not rely on any representations, statements or clarifications not made in writing in this RFP or in a formal addendum.

VIII. CITY PAYROLL TAX

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

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

These taxes, if applicable, are the sole responsibility of the Consultant. Proposers should consult their tax advisors as to the effect, if any, of these taxes. The Port Authority provides this notice for informational purposes only and is not responsible for either the imposition or administration of such taxes. The Port Authority exemption set forth in the Paragraph entitled “Sales Tax Exemption”, in Section IX below does not apply to these taxes.

IX. SALES TAX EXEMPTION

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 Consultant's services under this Agreement is exempt from Sales Taxes. Accordingly, the Consultant must not include Sales Taxes in the price charged to the Port Authority for the consultant's services under this Agreement.

X. PROTEST PROCEDURES

The information found at the following link is the sole administrative remedy for protesting procurement decisions:

http://www.panynj.gov/DoingBusinessWith/contractors/pdfs/Protest_Procedures.pdf

The Authority reserves the unqualified right, in its sole and absolute discretion, to reject all Proposals, to waive defects in Proposals, to undertake discussions and modifications with one or more Proposers/Consultants 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.

You shall be entitled to no compensation in connection with your preparation, submission or presentation of a Proposal. The Port Authority shall have no obligation to you except under a duly authorized and executed Agreement/Contract entered into by the Authority and the chosen Consultant.

Sincerely,

Richard Perez
Procurement Manager
Federal Procurement Management & Compliance

Procurement Department

ATTACHMENT A

PERFORMANCE OF EXPERT PROFESSIONAL ARCHITECTURAL/ENGINEERING INDEFINITE QUANTITY SERVICES CONTRACT (IQC), FOR THE DESIGN OF FEDERALLY FUNDED SUPER STORM SANDY-RELATED REPAIR AND RESILIENCY PROJECTS ON AN “AS-NEEDED” BASIS DURING 2013 - 2017

I. BACKGROUND

The Port Authority of New York and New Jersey (the “Port Authority” or “Authority”) is a municipal corporate instrumentality and political subdivision 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 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.”

The Authority’s facilities also include all of its wholly owned subsidiaries, such as but not limited to The Port Authority Trans-Hudson Corporation (PATH), a heavy-rail rapid-transit system, operating 24 hours a day, seven days a week, and serving as a critical link in the New York-New Jersey transportation network.

II. SCOPE OF WORK

The Port Authority is seeking experienced firms/consultants that can provide expert professional architectural/engineering design and post contract award services, on an “as needed” basis for Federally funded Super Storm Sandy related repair and resiliency projects at various Port Authority facilities. The Specific services are not quantifiable and therefore, competitive Task Orders will be issued against a series of Indefinite Quantity Contracts (IQCs). Architectural/Engineering services shall include but not be limited to: the preparation of technical evaluations; preparation of cost/benefit analyses of alternative mitigations; architectural/engineering design development, from conceptual design to final design; contract drawings; technical specifications; construction support services; and construction cost estimates.

Resiliency projects shall include, but not be limited to, design of mitigation measures to prevent and/or mitigate future damage to the Port Authority assets caused by severe meteorological events, for example, hurricane and flood.

III. DESCRIPTION OF CONSULTANT'S TASKS

Tasks to be performed by the Consultant may include, but shall not be limited to:

- A. Organize/Facilitate Meetings
- B. Field Inspections
- C. Project Scoping
- D. Feasibility Studies
- E. Preliminary and Final Design
- F. Budget Estimating
- G. Design Development
- H. Contract Drawing Preparation
- I. Detailed Construction Cost Estimating
- J. Technical Specification Preparation
- K. Shop Drawing Review and Approval
- L. Post Award Contract Support
- M. Code Analysis

Before the start of any Task Order that requires the Consultant to complete preparation of Contract Drawings, the Consultant shall submit its specific Quality Control/Assurance Program. Once the contract drawings are complete, a letter shall be submitted to the Engineer certifying the Consultant's conformance with the aforementioned Quality Control/Assurance Program.

IV. CONDITIONS AND PRECAUTIONS

A. General

Immediately inform the Authority of any unsafe condition discovered at any time during the course of work.

Throughout the period of work, immediately inform the Authority of findings if any, that represent unanticipated conditions that would reduce the intended effectiveness of the assigned task unless a modification to planned work was implemented.

Facility operations including vehicular traffic shall always have priority over any and all of the Consultant's operations.

B. Work Areas

Limit inspection work to the areas necessary for the performance of such inspection and do not interfere with the operation of the facility without first obtaining specific approval from the Port Authority's Chief Engineer.

During all periods of time when not performing operations at the work site, store all equipment being used in areas designated by the Authority; furnish and install all security required for such equipment.

Do not permit any objects or pieces of equipment to lie unattended on sidewalks, roadways or structures at any time.

C. Work Hours

Coordinate all work at the site(s) with the Port Authority’s Project Manager, unless otherwise directed by the Authority.

In any case, no work shall be performed at the site on a legal holiday of either the State of New Jersey or the State of New York.

V. TASK ORDER PROCESS

The list of qualified Firms/Consultants will be established for each of the Authority’s four Line Departments, which is segmented into Groups. Group 1 consists of: Aviation, Tunnels, Bridges and Terminals (TB&T), and Port Commerce, and Group 2 consists of PATH.

Upon determining the scope of work for the first Task Order, the following will apply:

<u>Task Order Value</u>	<u>Minimum # of Proposals Requested</u>
<\$1M	3
=>\$1M / <\$5M	6 (if number of selected firms is 6 or more in the appropriate category, if less than 6 firms the entire list will be solicited)
=>\$5M	Entire Category(ies) list as

A. Request for Task Order Proposal:

1. Request for Task Order Proposal - The Authority’s Project Manager (PM) or his or her designee shall transmit the Scope of Work (SOW) via a Task Order Request for Proposal (TRFP) to the Consultants.
2. Task Order Proposals – After receipt of the TRFP, submit within five working days to the PM a copy of the Technical Proposal and Cost Proposal (in a separate sealed envelope) containing the following items of information, in the order listed below:
 - a. A brief description of the proposed services;
 - b. A listing of any proposed Consultant and Sub-Consultant(s), as appropriate and staff. If any technical personnel have not been previously approved by the Authority, the following minimum background information is to be provided: detailed resume including name, individual's area of educational background, expertise, qualification and pertinent experience and Professional Licensure in the State work is to be performed;
 - c. The Task Order Proposal shall include: (a) Technical Proposal, including a management plan and technical approach; (b) Cost Proposal in separate sealed envelope, including the number of hours proposed by the Consultant and Sub-Consultant’s technical personnel for the completion of the work as outlined in the TRFP SOW, out of pocket expenses necessary to complete the task, and total estimated cost to complete the Task Order. All Costs Proposals shall be submitted pursuant to the Compensation provisions outlined in the IQC

Agreement. The Cost Proposal shall be accompanied by a breakdown of hours and hourly rates for the personnel proposed, as a function of each task/subtask in the TRFP. No deviation from the hourly matrix or reallocation of technical salaries shall be permitted, once accepted by the Authority, unless pre-approved in writing by the PM or his or her designee, on a case-by-case basis; and

- d. The Task Order Proposal shall include detailed schedule including all interim submissions and dates.

B. Issuance of Task Order(s):

1. Issuance of Task Order - After review and evaluation of the Task Order Proposals, the Authority will select the most qualified consultant. The Authority reserves the right to negotiate any portion of the Consultant's Task Order Proposal. If the Authority is unsuccessful in negotiating a task order with the most qualified Proposer, the Task Order Proposal of the next most qualified Proposer shall be negotiated. Once negotiations are complete, a task order shall be executed by the Authority and a Notice to Proceed (NTP) shall be issued to the Consultant for the Task Order. The Authority is under no obligation to issue Task Orders to the Consultant and no payment shall be made to the Consultant except for Tasks performed under an executed Task Order. No compensation shall be provided for any time, efforts, or costs incurred for bidding, estimating or negotiations or for any costs that are not directly related to performing the scope of work or that are otherwise considered overhead.
2. After the written Notice to Proceed for a Task Order has been issued, the Consultant shall complete the work within the schedule limit specified in the Task Order.
3. During the course of performing the work, the Consultant shall submit weekly accounts of time billed and daily logs for all positions billed to the task order, to be reviewed and approved by the PM. Any discrepancies shall be mediated by and at the sole discretion of the Authority. Failure to provide summaries and logs shall be cause for non-payment for those hours/personnel not justified as described above.
4. Decreasing Scope of Task Order(s) – The Authority shall have the right to reduce the Scope of a Task Order, at any time and for any reason, upon written notice by the PM to the Consultant, specifying the nature and extent of such reduction. In such event, the Consultant shall be fully compensated for work already performed under the Task Order prior to receipt of written notification of such reduction.
5. Revisions – If during the performance of a Task Order the scope of work changes, the Consultant will be compensated in accordance with the Changes provisions of the IQC Agreement. In no event shall an increase in Services that are within the general scope of the Task Order Proposal result in an increase in Consultant’s fee.
 - a. If the Consultant is requested to perform work outside the scope of the task order, the Consultant may receive a written change in scope from the PM. The Consultant is required to acknowledge the change in scope in writing within five days of receipt of the notice. If no written change in scope is provided, the Consultant is responsible to ask for such direction in writing within five days of the change in scope occurring.

- b. If the Consultant is directed to reduce the scope of work, the PM will define the nature and impact of the reduction to the scope of work in writing. The Consultant is required to acknowledge the reduction to the scope of work in writing within five days of receipt of the notice. Any invoices for services based on the original scope of work, performed after a written scope reduction is issued, will not be approved.

It is the responsibility of the Consultant to obtain written authorization to proceed with any change in scope prior to commencing with the work.

END SCOPE OF WORK

ATTACHMENT B

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 (FOI Code) 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 which, if disclosed, would cause injury to the competitive position of the enterprise, and which information is identified by the Proposer as proprietary, as more fully set forth in the FOI Code, 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)

ORIGINAL AND PHOTOCOPIES OF THIS PAGE ONLY.
DO NOT RETYPE.

Attachment C-1

Proposer Prerequisite A.

The Proposer must demonstrate to the satisfaction of the Port Authority that it has the relevant experience and capability to manage a project of this type. The Proposer must demonstrate a minimum of five years experience per firm, from the date of proposal submission performing Architectural/Engineering design services for transportation facilities within the Line Department/Category(ies) specified. Experience shall include for Group 1: Aviation, Tunnels, Bridges/Terminals and Port Commerce inclusive, and Group 2 Railroads.

* Note - Duplicate form as necessary *

Reference RFP Section II – Proposer Prerequisites
If Proposer is a common law joint venture, specify which entity’s experience is being cited below to satisfy Prerequisite A.

Client Name/ Contracting Entity	
Contract Start Date	
Contract End Date	
Brief description of Scope of work	
Client Contact Name / Title	
Client Contact Email Address	
Client Contact Phone Number	

Client Name/ Contracting Entity	
Contract Start Date	
Contract End Date	
Brief description of Scope of work	
Client Contact Name / Title	
Client Contact Email Address	
Client Contact Phone Number	

Client Name/ Contracting Entity	
Contract Start Date	
Contract End Date	
Brief description of Scope of work	
Client Contact Name / Title	
Client Contact Email Address	
Client Contact Phone Number	

Attachment C-2

Proposer Prerequisite B.

The Proposer must demonstrate to the satisfaction of the Port Authority that it has the relevant experience and capability to manage a project of this type. Gross annual revenues of not less than \$5M per year for each of the last five (5) years, from the date of proposal submission in the performance of Architectural and Engineering design services.

* Note - Duplicate form as necessary *

Reference RFP Section II – Proposer Prerequisites
If Proposer is a common law joint venture, specify which entity’s experience is being cited below to satisfy Prerequisite B.

Client Name/ Contracting Entity	
Contract Start Date	
Contract End Date	
Construction Value	
Brief description of Scope of work	
Client contact Name / Title	
Client Contact Email Address	
Client Contact Phone Number	

Client Name/ Contracting Entity	
Contract Start Date	
Contract End Date	
Construction Value	
Brief description of Scope of work	
Client contact Name / Title	
Client Contact Email Address	
Client Contact Phone Number	

Client Name/ Contracting Entity	
Contract Start Date	
Contract End Date	
Construction Value	
Brief description of Scope of work	
Client contact Name / Title	
Client Contact Email Address	
Client Contact Phone Number	

ATTACHMENT D

DBE PROGRAM

This Agreement or Task Order is subject to the United States Department of Transportation regulations on Disadvantaged Business Enterprises (DBE's) contained in Part 26 of Title 49 of the Code of Federal Regulations. The following goal for DBE participation has been set for this Agreement:

Seventeen percent for firms owned and controlled by socially and economically disadvantaged individuals¹ and certified as DBEs by the Authority. Eligible DBE firms are listed on the following Uniform Certification Programs (UCPs) websites:

New York UCP – <http://www.nysucp.net/>

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

By proposing on this Agreement or Task Order, the firm assures the Authority that it will meet the foregoing goal and shall submit the DBE Goals Statement form (Appendix D-1) with their Proposal. If the firm determines it cannot make this assurance it may nevertheless submit a proposal but in such event it shall note on the DBE Goals Statement form the percentage of DBE participation it anticipates, including documentation supporting the good faith efforts made to achieve the goals set forth in the Agreement or Task Order.

The firm shall submit with its Proposal the DBE Participation Plan and Affirmation Statement (Appendix D-2) for each DBE firm it intends to use on this Agreement or Task Order. The DBE Participation Plan and Affirmation Statement shall provide the name and address of each DBE firm, a description of the work to be performed, the dollar value of each DBE subcontract and the signature affirmation from each DBE firm participating in this Agreement or Task Order.

A firm who fails to meet the DBE goal for this Agreement or Task Order and fails to demonstrate to the Authority that the firm has made good faith efforts to meet the DBE goal shall not be eligible to be awarded the Agreement or Task Order. The following are illustrative of good faith efforts:

- A. Attendance at a pre-bid meeting, if any, scheduled by the Authority to inform DBEs of subcontracting opportunities under a given solicitation;
- B. Advertisement in general circulation media, trade association publications, and minority-focused media for at least 20 days before bids or proposals are due. If 20 days are not available, publication for a shorter reasonable time is acceptable;
- C. Written notification to DBEs that their interest in the Agreement or Task Order is solicited;
- D. Efforts made to select portions of the work proposed to be performed by DBEs in order to increase the likelihood of achieving the stated goal;

¹ Individuals who are rebuttably presumed to be socially and economically disadvantaged include women, Blacks, Hispanics, Native Americans, Asian-Pacific Americans, and Asian-Indian Americans. A firm may meet the DBE goal by using any combination of disadvantaged businesses.

- E. Efforts to negotiate with DBEs for specific sub-bids including at a minimum;
 - 1. The names, addresses, and telephone numbers of DBEs that were contacted;
 - 2. A description of the information provided to DBEs regarding the Agreement or Task Order Drawings and Specifications for portions of the work to be performed; and
 - 3. A statement of why additional agreements with DBEs were not reached.
- F. The name of each DBE contacted but rejected by the firm as unqualified, and the reasons for the firm's rejection;
- G. Efforts made to assist the DBEs contacted that need assistance in obtaining bonding or insurance required by the Consultant or Authority.

The firm shall submit with its Agreement or Task Order proposal the completed Information on Solicited Firms form (Appendix D-3) listing every firm that provided a quotation to the firm for any subcontract to be performed under this Agreement or Task Order, whether or not the firm is DBE certified and whether or not the firm's quote was included in the final Agreement or Task Order proposal.

ATTACHMENT D-1

DBE GOALS STATEMENT

The undersigned Consultant has satisfied the requirements of the Agreement or Task Order in the following manner (Complete the appropriate spaces):

The Consultant is committed to meeting the DBE utilization goal set forth in this Agreement or Task Order.

or

The Consultant is unable to meet the DBE utilization goal set forth in this Agreement or Task Order, but is committed to a minimum of 1% DBE utilization on this Agreement or Task Order and submits the attached narrative and documentation demonstrating good faith efforts consistent with Appendix A of 49 CFR 26 to meet the DBE utilization goal set forth in this Agreement or Task Order. (Attach as many pages as necessary to provide a full and complete narrative and supporting documentation of good faith efforts made. This narrative shall be submitted on company letterhead and signed.)

It is the present intent of the Consultant to utilize the specific DBE firms identified in Appendix D-2 in the performance of the Work of this Agreement or Task Order. If for any reason, one or more of the DBE firms identified in Appendix D-2 are unable or unwilling to participate, the Consultant will make good faith efforts to replace the DBE firm with another DBE firm in accordance with Part II clause entitled "DBE Program".

Consultant Name:

Federal Tax ID No.: _____

By: _____

Signature and Title

ATTACHMENT D-2
DBE PARTICIPATION PLAN AND AFFIRMATION STATEMENT

Instructions: Submit one DBE PARTICIPATION PLAN AND AFFIRMATION STATEMENT form for each DBE firm used on this Agreement or Task Order.

CONTRACT NUMBER AND TITLE: _____

Prime Consultant:

Name of Firm: _____

Address: _____ Telephone: _____

Email Address: _____

DBE:

Name of Firm: _____

Address: _____ Telephone: _____

Description of work to be performed by DBE: _____

The Prime Consultant is committed to utilizing the above-named DBE for the work described above. The estimated dollar value of this work is \$ _____ or ____% of the total contract amount of \$ _____. The anticipated start date of the work to be performed by DBE is _____ and the anticipated completion date is _____.

AFFIRMATION

The above-named DBE affirms that it will perform the portion of the Agreement or Task Order for the estimated dollar value as stated above.

By: _____

Signature and Title of DBE corporate officer

If the Prime Consultant does not receive award of the Agreement or Task Order, any and all representations in this DBE Participation Plan and Affirmation Statement shall be null and void.

By: _____

Signature and Title of Prime Consultant corporate officer

FOR OBDCR USE ONLY

Contract Goals: Approved Waived Rejected

Reviewed By: _____

OBDCR Business Development Representative

Print Name: _____ Date: _____

Please Note: Supplies, equipment and material men are credited only 60% towards the DBE goal. Please adjust calculations accordingly.

RFP NO. 34575

ATTACHMENT G

COMMERCIAL LIABILITY INSURANCE AND WORKERS' COMPENSATION INSURANCE

A. Commercial Liability Insurance:

1) The Consultant shall take out and maintain at his own expense Commercial General Liability Insurance including but not limited to Premises-Operations, Completed Operations, coverage for work within fifty feet (50') of railroad and Independent Contractor's coverages in limits of not less than \$5,000,000 combined single limit per occurrence for Bodily Injury Liability and Property Damage Liability. 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 security escort approved in writing by the Project Manager. If, at any time, the Consultant is unescorted in the performance of any field services airside, or if so directed by the Authority, the Commercial General Liability Insurance and Automobile Liability Insurance must contain limits of not less than \$25,000,000 combined single limit per occurrence/accident. In addition, the liability policy (ies) shall include the "The Port Authority of New York and New Jersey and its related entities, including but not limited to Port Authority Trans Hudson Corporation as additional insureds" and the policy (ies) and its certificate must contain an endorsement provision that the policy 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 Agreement 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 Engineer for specific services hereunder and include the additional premium cost thereof as an out-of-pocket expense:

- a) Endorsement to eliminate any exclusions applying to the explosion, collapse and underground property damage (XCU) hazards.

- b) Endorsement to eliminate any exclusions on account of ownership, maintenance, operation, use, loading or unloading of watercraft.
- c) 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/accident as provided herein.

B. Workers' Compensation Insurance:

1) The Consultant shall take out and maintain 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

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 Professional Liability Insurance in limits of not less than \$5,000,000 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:

1) Prior to commencement of work at the site, the Consultant shall deliver a certificate from its insurer evidencing policies of the above insurance, including but not limited to the cancellation endorsement along with 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.

2) 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.

3) 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 Agreement at the premises. If the Agreement is so suspended, no extension of time shall be due on account thereof. If the

Agreement 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.

4) 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.

5) 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 Agreement. The insurance requirements are not a representation by the Authority and its related entities 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 Agreement.

ATTACHMENT J

**FEDERAL TRANSIT ADMINISTRATION
REQUIRED CONTRACT PROVISIONS**

1. INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION TERMS.....	2
2. FEDERAL CHANGES.....	2
3. NO FEDERAL GOVERNMENT OBLIGATIONS TO THIRD PARTIES.....	2
4. ORGANIZATIONAL CONFLICT OF INTEREST.....	2
5. CERTIFICATION - DEBARMENT AND SUSPENSION.....	3
6. CERTIFICATION - LOBBYING RESTRICTIONS –CONTRACTS EXCEEDING \$100,000.....	5
7. ACCESS TO RECORDS AND REPORTS.....	12
8. CIVIL RIGHTS.....	12
9. CARGO PREFERENCE - USE OF UNITED STATES FLAG VESSELS.....	14
10. DAVIS-BACON AND COPELAND ANTI-KICKBACK ACTS – CONTRACTS EXCEEDING \$2000.....	14
11. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT – CONTRACTS EXCEEDING \$100,000.....	22
12. SEISMIC SAFETY (IF APPLICABLE).....	23
13. ENERGY CONSERVATION.....	23
14. CLEAN WATER REQUIREMENTS – CONTRACTS EXCEEDING \$100,000.....	23
15. CLEAN AIR REQUIREMENTS – CONTRACTS EXCEEDING \$100,000.....	24
16. FLY AMERICA.....	24
17. CONTRACTS INVOLVING FEDERAL PRIVACY ACT REQUIREMENTS.....	24
18. PREFERENCE FOR RECYCLED PRODUCTS.....	25
19. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS.....	25
20. TRANSIT EMPLOYEE PROTECTIVE REQUIREMENTS.....	25
21. ADA ACCESS REQUIREMENTS.....	26
22. BUY AMERICA.....	26
23. DISADVANTAGED BUSINESS ENTERPRISES (DBE).....	26
BUY AMERICA CERTIFICATIONS.....	27
CERTIFICATION REQUIREMENT FOR PROCUREMENT OF STEEL, IRON, OR MANUFACTURED PRODUCTS (NON- ROLLING STOCK).....	27
CERTIFICATION REQUIREMENT FOR PROCUREMENT OF BUSES, OTHER ROLLING STOCK AND ASSOCIATED EQUIPMENT (ROLLING STOCK).....	28
CERTIFICATION REGARDING LOBBYING PURSUANT TO 31 U.S.C. 1352.....	29
STANDARD FORM LLL - DISCLOSURE OF LOBBYING ACTIVITIES.....	30
CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION - LOWER TIER COVERED TRANSACTIONS.....	33

1. INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION TERMS

As used herein, the term “Agreement” shall mean “Contract”. This Agreement is anticipated to be partially funded by United States Department of Transportation’s Federal Transit Administration (FTA).

Anything to the contrary herein notwithstanding, all mandated terms by the FTA shall be deemed to control in the event of a conflict with other provisions contained in this Contract. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any Authority requests that would cause the Authority to be in violation of the FTA terms and conditions.

Each and every provision required by the FTA 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 herein. If any provision of this Contract shall be such as to effect non-compliance with any FTA requirement, such provision shall not be deemed to form part hereof, but the balance of this Contract shall remain in full force and effect.

2. FEDERAL CHANGES

The Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference, as they may be amended or promulgated from time to time during the term of this Contract. Contractor’s failure to so comply shall constitute a material breach of this Contract. The most recent Federal laws, regulations, policies, and administrative practices apply to this Contract at any particular time, unless FTA issues a written determination otherwise. All standards or limits within the this docuemnt are minimum requirements, unless modified by the FTA or subagency thereof.

3. NO FEDERAL GOVERNMENT OBLIGATIONS TO THIRD PARTIES

The Authority and the Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this Contract and shall not be subject to any obligations or liabilities to the Authority, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal Assistance provided by the FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

4. ORGANIZATIONAL CONFLICT OF INTEREST

- A. This Contract 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 contract may, without some form of restriction on future activities; result in an unfair competitive advantage to the Contractor.

- 1.) The Contractor shall have access to confidential and/or sensitive Authority information in the course of contract performance. Additionally, the Contractor may be provided access to proprietary information obtained from other contracted entities during contract performance. The Contractor agrees to protect all such information from disclosure unless so authorized, in writing, by the Authority and to refrain from using such information for any purpose other than that for which it was furnished.
 - 2.) To the extent that the Contractor either (a) uses confidential and/or sensitive Authority information or proprietary information obtained from other Authority contractors to develop any form of document, report, or plan that is determined by the Authority to be the basis, in whole or in part, of any subsequent solicitation issued by the Authority or (b) develops written specifications that are used in any subsequent solicitation issued by the 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 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 contract for which the Contractor was ineligible to compete.
- B. The Contractor, by submitting its bid or proposal, agrees to the above stated conditions and terms and further agrees to perform all duties under the contract and, in doing so, not to enter into contractual agreements with Authority prime contractors and first-tier subcontractors in such a way as to create an organizational conflict of interest.
- C. If the Authority determines that the Contractor has violated any term of this numbered clause, the Authority may take any appropriate action available under the law or regulations to obtain redress to include, but not be limited to, requiring the Contractor to terminate any affiliation or contractual arrangement with an Authority prime contractor or first-tier subcontractor at no cost to the 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 Contract or violations of this numbered clause, or terminating this Contract, in whole or in part.

5. CERTIFICATION - DEBARMENT AND SUSPENSION

This Contract is a covered transaction for purposes of 2 CFR Parts 180 and 1200. As such, the Contractor is required to verify that none of the Contractor, its principals, as defined at 2 CFR 180.995, or affiliates, as defined at 2 CFR 180.905, are excluded or disqualified as defined at 2 CFR 180.935 and 180.940.

The Contractor is required to comply with 2 CFR 180, Subpart C and must include the requirement to comply with 2 CFR 180, Subpart C in any lower tier covered transaction it enters into.

By signing and submitting its bid or proposal, the proposer certifies as follows:

The certification in this clause is a material representation of fact relied upon by the Port Authority of New York and New Jersey. If it is later determined that the proposer knowingly rendered an erroneous certification, in addition to remedies available to the Port Authority of New York and New Jersey, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The proposer agrees to comply with the requirements of 2 CFR 180, Subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

- A. FTA requires that each potential Contractor, for major third party contracts, complete a certification entitled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion" for itself and its principals and requires each Subcontractor or Supplier (for Subcontracts and Supplier agreements expected to equal or exceed \$25,000) to complete a certification entitled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tiered Covered Transactions" for itself and its principals. Copies of the required Certification forms and accompanying instructions are set forth following the clause herein entitled "Integrity Monitor".
- B. In the event that the Contractor has certified prior to award that it is not proposed for debarment, debarred, suspended, or voluntarily excluded from covered transactions by any Federal Department or agency and such certification is found to be false, this Contract may be canceled, terminated or suspended by the Authority and the Contractor will be liable for any and all damages incurred by the Authority because of such cancellation, termination or suspension because of such false certification.
- C. The Contractor shall obtain certifications from all known potential Subcontractors and Suppliers (for which payments are expected to equal or exceed \$25,000) and submit such certifications to the address set forth in E below.
- D. Prior to the award of any Subcontracts or Supplier agreements expected to equal or exceed \$25,000, regardless of tier, any prospective Subcontractor or Supplier who has not previously submitted a certification for this Contract must execute and submit to the Contractor a certification in the form set forth following the clause herein entitled "Integrity Monitor" which will be deemed a part of the resulting Subcontract and Supplier agreement.
- E. The originals of any Certifications or correspondence relating hereto shall be sent by the Contractor to the Director of Procurement, One Madison Avenue, 7th Floor, New York, NY 10010.

- F. The Contractor shall not knowingly enter into any Subcontracts or Supplier agreements with a person that is proposed for debarment, debarred, suspended, declared ineligible or voluntarily excluded from covered transactions.
- G. As required by FTA, the Contractor and its Subcontractors or Suppliers required to file the certification have a continuing duty to disclose, and shall provide immediate written notice to the Authority if, at any time, it learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

6. CERTIFICATION - LOBBYING RESTRICTIONS –CONTRACTS EXCEEDING \$100,000

A. Definitions as used in this Clause:

- 1.) "Agency," as defined in 5 U.S.C. 552(f), includes Federal executive departments and agencies as well as independent regulatory commissions and Government corporations, as defined in 31 U.S.C. 9101(1). As used in the Certification set forth following the clause herein entitled "Integrity Monitor" t, it also includes any other public agency.
- 2.) "Covered Federal action" means any of the following Federal actions:
 - a. The awarding of any Federal contract;
 - b. The making of any Federal grant;
 - c. The making of any Federal loan;
 - d. The entering into of any cooperative agreement; and
 - e. The extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement. As used in the above referenced Certification, it includes the award of the contract with which it is associated.
- 3.) "Indian tribe" and "tribal organization" have the meaning provided in Section 4 of the Indian Self Determination and Education Assistance Act (25 U.S.C. 450B). Alaskan natives are included under the definitions of Indian tribes in that Act.
- 4.) "Influencing or attempting to influence" means making, with the intent to influence, any communication to or appearance before an officer or employees of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any covered Federal action.
- 5.) "Local government" means a unit of government in a State and, if chartered, established, or otherwise recognized by a State for the performance of a governmental duty, including a local public authority, a special district, an

intrastate district, a council of governments, a sponsor group representative organization, and any other instrumentality of a local government. It also includes a bi-state agency.

- 6.) "Officer or employee of an agency" includes the following individuals who are employed by an agency:
 - a. An individual who is appointed to a position in the Government under title 5, United States Code, including a position under a temporary appointment;
 - b. A member of the uniformed services as defined in section 101(3), title 37, United States Code;
- 7.) A special government employee as defined in Section 202, title 18, United States Code;
 - a. An individual who is a member of a Federal advisory committee, as defined by the Federal Advisory Committee Act, Title 5, United States Code Appendix 2; and
 - b. An employee of a bi-state agency.
- 8.) "Person" means an individual, corporation, company, association, authority, firm, partnership, society, State, and local government, regardless of whether such entity is operated for profit or not for profit. This term excludes an Indian tribe, tribal organization, or any other Indian Organization with respect to expenditures specifically permitted by other Federal law.
- 9.) "Reasonable Compensation" means, with respect to a regularly employed officer or employee of any person, compensation that is consistent with the normal compensation for such officer or employee for work that is not furnished to, not funded by, or not furnished in cooperation with the Federal Government.
- 10.) "Reasonable Payment" means, with respect to professional and other technical services, a payment in an amount that is consistent with the amount normally paid for such services in the private sector.
- 11.) "Recipient" includes all contractors and subcontractors at any tier in connection with a Federal Contract. The term excludes an Indian Tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law.
- 12.) "Regularly Employed" means, with respect to an officer or employee of a person requesting or receiving a Federal Contract, an officer or employee who is employed by such person for at least one hundred and thirty (130) working days within one (1) year immediately preceding the date of the

submission that initiates agency consideration of such person for receipt of such contract. An officer or employee who is employed by such person for less than one hundred and thirty (130) working days within one (1) year immediately preceding the date of the submission that initiates agency consideration of such person shall be considered to be regularly employed as soon as he or she is employed by such person for one hundred and thirty (130) working days.

- 13.) "State" means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, a territory or possession of the United States, an agency or instrumentality of a State, and a multi-state, regional, or interstate entity having governmental duties and powers.

B. Prohibition

- 1.) Section 1352 of Title 31, United States Code provides in part that no appropriated funds may be expended by the recipient of a Federal contract, grant, loan, or cooperative agreement to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any of the following covered Federal actions: the awarding of any Federal contract; the making of any Federal grant; the making of any Federal loan; the entering into of any cooperative agreement; and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement. For the purposes of the Certification included herein following the clause entitled "Integrity Monitor", it includes the award of the associated contract.
- 2.) The prohibition does not apply as follows:
 - a. Agency and legislative liaison by own employees.
 - (i) The prohibition on the use of appropriated funds, in subparagraph B.1.) of this Section, does not apply in the case of a payment of reasonable compensation made to an officer or employee of a person requesting or receiving a Federal contract or the contract associated with the certification if the payment is for agency and legislative liaison activities not directly related to a covered Federal Action.
 - (ii) For purposes of subparagraph B. 2.) a.(i) of this Section, providing any information specifically requested by an agency or Congress is allowable at any time.
 - (iii) For purposes of subparagraph B. 2.) a.(i) of this Section, the following agency and legislative liaison activities are allowable at any time only where they are not related to specific solicitation for any covered Federal action.

- (a.) Discussing with an agency (including individual demonstrations) the qualities and characteristics of the person's products or services, conditions or terms of sales and service capabilities; and,
 - (b.) Technical discussions and other activities regarding the application or adaptation of the person's products or services for an agency's use.
- (iv) For purposes of paragraph B. 2)a.(i) of this Section, the following agency and legislative liaison activities are allowable only where they are prior to formal solicitation of any covered Federal action:
- (a.) Providing any information not specifically requested but necessary for an agency to make an informed decision about initiation of a covered Federal action;
 - (b.) Technical discussions regarding the preparation of an unsolicited proposal prior to its official submission; and
 - (c.) Capability presentations by persons seeking awards from an agency pursuant to the provisions of the Small Business Act, as amended by Public Law 95-507 and other subsequent amendments.
- (v) Only those activities expressly authorized by subparagraph B. 2)a. of this Section are allowable under subparagraph B. 2)a.
- b. Professional and Technical Services by Own Employees.
- (i) The prohibition on the use of appropriated funds, in subparagraph B. of this Section, does not apply in the case of a payment of reasonable compensation made to an officer or employee of a person requesting or receiving a Federal contract or an extension, continuation, renewal, amendment, or modification of a Federal contract or the contract associated with the certification if payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that contract or for meeting requirements imposed by or pursuant to law as a condition for receiving that contract.
 - (ii) For purposes of subparagraph B. 2.) b. (i) of this Section, "professional and technical services" shall be limited to advice and analysis directly applying any professional or technical discipline. For example, drafting of a legal document accompanying a bid or

proposal by a lawyer is allowable. Similarly, technical advice provided by an engineer on the performance or operational capability of a piece of equipment rendered directly in the negotiation of a contract is allowable. However, communications with the intent to influence made by a professional (such as a licensed lawyer) or a technical person (such as a licensed accountant) are not allowable under this Section unless they provided advice and analysis directly applying their professional or technical expertise and unless the advice or analysis is rendered directly and solely in the preparation, submission or negotiation of a covered Federal action. Thus, for example, communications with the intent to influence made by a lawyer that do not provide legal advice or analysis directly and solely related to the legal aspects of his or her client's proposal, but generally advocate one proposal over another are not allowable under this Section because the lawyer is not providing professional legal services. Similarly, communications with the intent to influence made by an engineer providing an engineering analysis prior to the preparation or submission of a bid or proposal are not allowable under this Section since the engineer is providing technical services but not directly in the preparation, submission or negotiation of a covered Federal action.

- (iii) Requirements imposed by or pursuant to law as a condition for receiving a covered Federal award include those required by law or regulation, or reasonably expected to be required by law or regulation, and any other requirements in the actual award documents.
- (iv) Only those services expressly authorized by subparagraph B. 2.) b. this Section are allowable under subparagraph B. 2.) b.

c. Reporting for Own Employees.

No reporting is required with respect to payments of reasonable compensation made to regularly employed officers or employees of a person.

d. Professional and Technical Services by Other than Own Employees.

- (i) The prohibition on the use of appropriated funds, in subparagraph B. 1.) of this Section, does not apply in the case of any reasonable payment to a person, other than an officer or employee of a person requesting or receiving a covered Federal action, if the payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal contract or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal contract.

- (ii) For purposes of subparagraph B. 2.) d. (i) of this Section, "professional and technical services" shall be limited to advice and analysis directly applying any professional or technical discipline. For example, drafting of a legal document accompanying a bid or proposal by a lawyer is allowable. Similarly, technical advice provided by an engineer on the performance or operational capability of a piece of equipment rendered directly in the negotiation of a contract is allowable. However, communications with the intent to influence made by a professional (such as a licensed lawyer) or a technical person (such as a licensed accountant) are not allowable under this Section unless they provided advice and analysis directly applying their professional or technical expertise and unless the advice or analysis is rendered directly and solely in the preparation, submission or negotiation of a covered Federal action. Thus, for example, communications with the intent to influence made by a lawyer that do not provide legal advice or analysis directly and solely related to the legal aspects of his or her client's proposal, but generally advocate one proposal over another are not allowable under this Section because the lawyer is not providing professional legal services. Similarly, communications with the intent to influence made by an engineer providing an engineering analysis prior to the preparation or submission of a bid or proposal are not allowable under this Section since the engineer is providing technical services but not directly in the preparation, submission or negotiation of a covered Federal action.
- (iii) Requirements imposed by or pursuant to law as a condition for receiving a covered Federal award include those required by law or regulation, or reasonably expected to be required by law or regulation, and any other requirements in the actual award documents.
- (iv) Persons other than officers or employees of a person requesting or receiving a covered Federal action include consultants and trade associations.
- (v) Only those services expressly authorized by subparagraph B. 2.) d. of this Section are allowable under subparagraph B. 2.) d.

C. Disclosure

- 1.) Each person who requests or receives from the Authority a Contract with Federal assistance shall file with the Authority a certification entitled "Certification Regarding Lobbying Pursuant to 31 U.S.C. 1352," as set forth following the clause herein entitled "Integrity Monitor" that the person has not made, and will not make, any payment prohibited by subparagraph B. of this Clause. Each person who requests or receives from the Authority a

Contract with Federal assistance shall file with the Authority a disclosure form entitled "Disclosure of Lobbying Activities Pursuant to 31 U.S.C. 1352" (Standard Form-LLL), as set forth following the clause herein entitled "Integrity Monitor", if such person has made or has agreed to make any payment using non-appropriated funds (to include profits from any covered Federal action), which would be prohibited under subparagraph B. of this Clause if paid for with appropriated funds.

- 2.) Each person shall file a disclosure form at the end of each calendar quarter in which there occurs any event that requires disclosure or that materially affects the accuracy of the information contained in any disclosure form previously filed by such person under subparagraph C.2) of this Section. An event that materially affects the accuracy of the information reported includes:
 - a. A cumulative increase of \$25,000 or more in the amount paid or expected to be paid for influencing or attempting to influence a covered Federal action; or
 - b. A change in the person(s) or individual(s) influencing or attempting to influence a covered Federal action; or
 - c. A change in the officer(s), employee(s), or Member(s) contacted to influence or attempt to influence a covered Federal action.
- 3.) Any person who requests or receives from a person referred to in subparagraph C.1) of this Section a subcontract exceeding \$100,000 at any tier under a Federal contract shall file a certification, and a disclosure form, if required, to the next tier above.
- 4.) All disclosure forms, but not certifications, shall be forwarded from tier to tier until received by the person referred to in subparagraph C.1) of this Section. That person shall forward all disclosure forms to the Authority.

D. Agreement

- 1.) In accepting any contract resulting from this solicitation, the person submitting the offer agrees not to make any payment prohibited by this Clause.

E. Penalties

- 1.) Any person who makes an expenditure prohibited under subparagraph A of this Clause shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure.
- 2.) Any person who fails to file or amend the disclosure form to be filed or amended if required by the Clause, shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

- 3.) Contractors may rely without liability on the representations made by their Subcontractors in the certification and disclosure form.

F. Cost Allowability

Nothing in this Clause is to be interpreted to make allowable or reasonable any costs which would be unallowable or unreasonable in accordance with Part 31 of the Federal Acquisition Regulation. Conversely, costs made specifically unallowable by the requirements in this Clause will not be made allowable under any of the provisions of Part 31 of the Federal Acquisition Regulation.

7. ACCESS TO RECORDS AND REPORTS

The Contractor agrees to provide the Authority, the [agency] Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this Contract for the purposes of making audits, examinations, excerpts and transcriptions. The Contractor also agrees, pursuant to 49 CFR 633.15 to provide the [agency] Administrator or authorized representatives thereto including any PMO Contractor access to the Contractor's records and construction sites pertaining to the project.

The Contractor agrees to provide the Authority, [agency] Administrator, the Comptroller General of the United States or any of their duly authorized representatives with access to any books, documents, papers and record of the Contractor which are directly pertinent to this Contract for the purposes of making audits, examinations, excerpts and transcriptions.

The Contractor shall make available records related to the contract to the Authority, the Secretary of Transportation and the Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.

The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

The Contractor agrees to maintain all books, records, accounts and reports required under this Contract for a period of not less than three (3) years after final payment is made by the Authority and all other pending matters are closed, except in the event of litigation or settlement of claims arising from the performance of this Contract, in which case the Contractor agrees to maintain same until the Authority, the [agency] Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto.

This requirement is independent of the Authority's requirements for record retention contained elsewhere in the contract documents.

8. CIVIL RIGHTS

- A. Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975,

as amended, 42 U.S.C. § 6102, and section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

B. Equal Employment Opportunity - The following equal employment opportunity requirements apply to the underlying contract:

- 1.) Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 *et seq.*, (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.
- 2.) Age - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 623, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.
- 3.) Disabilities - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

C. The Contractor also agrees to include these requirements in each subcontract related to this project, modified only if necessary to identify the affected parties.

9. CARGO PREFERENCE - USE OF UNITED STATES FLAG VESSELS

If this Contract involves equipment, materials, or commodities that may be transported by ocean vessels, the Contractor herein agrees:

- A. To utilize privately owned United States-flag commercial vessels to ship at least fifty percent (50%) of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to this Contract, to the extent such vessels are available at fair and reasonable rates for United States-flag commercial vessels.
- B. To furnish within twenty (20) days following the date of loading for shipments originating within the United States or within thirty (30) working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in paragraph (1) above to the [agency] Administrator and grantee (through the prime contractor in the case of subcontractor bills-of-lading) and to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20230.
- C. To include these requirements in all subcontracts issued pursuant to this Contract when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.

10. DAVIS-BACON AND COPELAND ANTI-KICKBACK ACTS – CONTRACTS EXCEEDING \$2000

The Davis-Bacon and Copeland Acts are codified at 40 USC 3141, *et seq.* and 18 USC 874. The Acts apply to grantee construction contracts and subcontracts that "at least partly are financed by a loan or grant from the Federal Government." 40 USC 3145(a), 29 CFR 5.2(h), 49 CFR 18.36(i)(5). The Acts apply to any construction contract over \$2,000. 40 USC 3142(a), 29 CFR 5.5(a). 'Construction,' for purposes of the Acts, includes "actual construction, alteration and/or repair, including painting and decorating." 29 CFR 5.5(a). The requirements of both Acts are incorporated into a single clause (*see* 29 CFR 3.11) enumerated at 29 CFR 5.5(a) and reproduced below and are applicable if this Contract is a construction contract (as delineated above) over \$2000.

- A. Minimum Wages
 - 1.) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not

less than those contained in the wage determination of the Secretary of Labor which, if applicable, is attached hereto and made a part hereof (the attachment is the most current determination), regardless of any contractual relationship which may be alleged to exist between the Contractor and such laborers and mechanics. Determinations may change during the term of the Contract, and the wages and fringe benefits required by the most recent determination of the Secretary of Labor are those to be used.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (A)(4) of this Section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR Part 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classifications and wage rates conformed under paragraph (A)(2) of this Section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the Contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

2.)

- a. The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:
 - (i) Except with respect to helpers as defined as 29 CFR 5.2(n)(4), the work to be performed by the classification requested is not performed by a classification in the wage determination;
 - (ii) The classification is utilized in the area by the construction industry;
 - (iii) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination; and
 - (iv) With respect to helpers as defined in 29 CFR 5.2(n)(4), such a classification prevails in the area in which the work is performed.

- b. If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action

taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

- c. In the event the Contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.
 - d. The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs A (2)(ii) (b) or (c) of this Section, shall be paid to all workers performing work in the classification under this Contract from the first day on which work is performed in the classification.
- 3.) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the Contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.
- 4.) If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the Contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.
- 5.)
- a. The contracting officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefor only when the following criteria have been met:

- (i) The work to be performed by the classification requested is not performed by a classification in the wage determination;
 - (ii) The classification is utilized in the area by the construction industry; and
 - (iii) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.
- b. If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.
- c. In the event the Contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination with 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.
- d. The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs A (2)(ii)(b) or (c) of this Section, shall be paid to all workers performing work in the classification under this Contract from the first day on which work is performed in the classification.

B. Withholding

The Authority shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the Contractor under this Contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the Contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act

of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, the Authority may, after written notice to the Contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

C. Payrolls and Basic Records

- 1.) Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the Contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.
- 2.)
 - a. The Contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the Authority for transmission to the Federal Transit Administration. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under section 5.5(a)(3)(i) of Regulations, 29 CFR part 5. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-00014-1), U.S. Government Printing Office, Washington, DC 20402. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors.
 - b. Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the Contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

- (i) That the payroll for the payroll period contains the information required to be maintained under section 5.5(a)(3)(i) of Regulations, 29 CFR part 5 and that such information is correct and complete;
 - (ii) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;
 - (iii) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.
 - c. The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph C(2)(b) of this Section.
 - d. The falsification of any of the above certifications may subject the Contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.
- 3.) The Contractor or subcontractor shall make the records required under paragraph C(1) of this Section available for inspection, copying, or transcription by authorized representatives of the Federal Transit Administration or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the Contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the Contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

D. Apprentices and Trainees

- 1.) Apprentices - Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and

Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the Contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a Contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the Contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator of the Wage and Hour Division of the U.S. Department of Labor determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the Contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

- 2.) Trainees - Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage

determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the Contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

- 3.) Equal employment opportunity - The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.

E. Compliance with Copeland Act Requirements

The Contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this Contract.

F. Subcontracts

The Contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the Federal Transit Administration may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

G. Contract Termination: Debarment

A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

H. Compliance with Davis-Bacon and Related Act Requirements

All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this Contract.

I. Disputes Concerning Labor Standards

Disputes arising out of the labor standards provisions of this Contract shall not be subject to the general disputes clause of this Contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include

disputes between the Contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

J. Certification of Eligibility –

- 1.) By entering into this Contract, the Contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the Contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
- 2.) No part of this Contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
- 3.) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

11. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT – CONTRACTS EXCEEDING \$100,000

The Contract Work Hours and Safety Standards Act applies to grantee contracts and subcontracts under 40 USC 3701(b)(1)(B)(iii) and (b)(2), 29 CFR 5.2(h), 49 CFR 18.36(i)(6) for contracts for construction, and non-construction projects that employ “laborers or mechanics on a public work, where the contract amount is greater than \$100,000.

A. Overtime Requirements

No Contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

B. Violation; liability for unpaid wages; liquidated damages

In the event of any violation of the clause set forth in paragraph A of this Section the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph A of this Section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph A of this Section.

- C. **Withholding for unpaid wages and liquidated damages**
The Authority shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph B of this Section.
- D. **Subcontracts**

The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs A through D of this Section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs A through D of this Section.

12. SEISMIC SAFETY (IF APPLICABLE)

If this is a contract for the construction of new buildings or additions to existing buildings, the Contractor agrees that any new building or addition to an existing building will be constructed in accordance with standards for Seismic Safety required in Department of Transportation Seismic Safety Regulations 49 CFR Part 41 and will certify compliance to the extent required by the regulation. The Contractor also agrees to ensure that all work performed under this Contract including work performed by a subcontractor is in compliance with the standards required by the Seismic Safety Regulations and the certification of compliance. The completed certification of compliance is to be submitted to the Engineer. The seismic safety standards applicable to this Contract are contained in Section 2312 ICBO Uniform Building Code (UBC), as modified by the Appendix to Title 27, Chapter 1 (Volume 7), of the Administrative Code and Charter of the City of New York at RS 9-6 Earthquake Loads.

13. ENERGY CONSERVATION

The Contractor agrees to comply with the mandatory energy efficiency standards and policies within the applicable State energy conservation plans issued in compliance with the Energy Policy and Conservation Act, 42 U.S.C. §6321 et seq and the National Environmental Policy Act, 42 U.S.C. §4321 et seq. The Contractor also agrees to ensure that all work performed under this Contract including work performed by a Subcontractor is in compliance with the requirements of this Section.

14. CLEAN WATER REQUIREMENTS – CONTRACTS EXCEEDING \$100,000

- A. The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 USC §1251 et seq.

- B. The Contractor agrees to report each violation to the Authority and understands and agrees that the Authority will, in turn, report each violation as required to assure notification to [agency] and the appropriate EPA Regional Office.
- C. The Contractor also agrees to include the requirements of this Article in all subcontracts exceeding \$100,000 issued pursuant to this Contract.

15. CLEAN AIR REQUIREMENTS – CONTRACTS EXCEEDING \$100,000

- A. The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 USC §7401 et seq. The Contractor agrees to report each violation to the Authority and understands and agrees that the Authority will, in turn, report each violation as required to assure notification to [agency] and the appropriate EPA Regional Office.
- B. The Contractor also agrees to include the requirements of this Clause in all subcontracts exceeding \$100,000 issued pursuant to this Contract.

16. FLY AMERICA

The Federal Government will not participate in the costs of international air transportation of any persons involved in or property acquired for this Contract unless that air transportation is provided by U.S.-flag air carriers to the extent service by U.S.-flag air carriers is available, in accordance with the International Air Transportation Fair Competitive Practices Act of 1974, as amended, 49 U.S.C. § 40118, and with U.S. GSA regulations, "Use of United States Flag Air Carriers," 41 C.F.R. §§ 301-10.131 through 301-10.143.

17. CONTRACTS INVOLVING FEDERAL PRIVACY ACT REQUIREMENTS

The following requirements apply to the Contractor and its employees that administer any system of records on behalf of the Federal Government under any contract:

- A. The Contractor agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. § 552a. Among other things, the Contractor agrees to obtain the express consent of the Federal Government before the Contractor or its employees operate a system of records on behalf of the Federal Government. The Contractor understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract.
- B. The Contractor also agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by FTA.

18. PREFERENCE FOR RECYCLED PRODUCTS

The Contractor agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recover Act (RCRA), as amended (42 U.S.C. 6962), including but not limited to the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247.

19. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS

- A. The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 *et seq.* and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 CFR Part 31, apply to its actions pertaining to this Project. The Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the contract or project. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.
- B. The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under this Contract, financed in whole or in part with Federal assistance, the Federal Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate.
- C. The Contractor agrees to include the above two clauses in each subcontract related to this Contract. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

20. TRANSIT EMPLOYEE PROTECTIVE REQUIREMENTS

To the extent that transit operations are involved, the Contractor agrees to carry out the transit operations work on the underlying contract in compliance with terms and conditions determined by the U.S. Secretary of Labor to be fair and equitable to protect the interests of employees employed under this Contract and to meet the employee protective requirements of 49 U.S.C. A 5333(b), and U.S. DOL guidelines at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in the letter of certification from the U.S. DOL to FTA applicable to the FTA Recipient's project from which Federal assistance is provided to support work on the underlying contract. The Contractor agrees to carry out that work in compliance with the conditions stated in that U.S. DOL letter. The requirements of this subsection (1), however, do not apply to any contract financed with Federal assistance provided by FTA either for projects for elderly individuals and individuals with disabilities authorized by 49 U.S.C. § 5310(a)(2), or for projects for nonurbanized areas authorized by 49 U.S.C. § 5311. Alternate provisions for those projects are set forth in subsections (b) and (c) of this clause.

21. ADA ACCESS REQUIREMENTS

Facilities to be used in public transportation service must comply with 42 U.S.C. Sections 12101 *et seq.* and DOT regulations, “Transportation Services for Individuals with Disabilities (ADA),” 49 CFR Part 37; and Joint ATBCB/DOT regulations, “Americans with Disabilities (ADA) Accessibility Specifications for Transportation Vehicles,” 36 CFR Part 1192 and 49 CFR Part 38.

22. BUY AMERICA

The contractor agrees to comply with 49 U.S.C. 5323(j) and 49 C.F.R. Part 661, which provide that Federal funds may not be obligated unless steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 C.F.R. 661.7, and include final assembly in the United States. Separate requirements for rolling stock are set out at 49 U.S.C. 5323(j)(2)(C) and 49 C.F.R. 661.11. Rolling stock must be assembled in the United States and have a 60 percent domestic content.

If Port Authority issue a task order for final design work. The construction contract(s) prepared under that task order will be subject to either Buy America requirements of New York State or the FTA.

23. DISADVANTAGED BUSINESS ENTERPRISES (DBE)

A. This contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs. The national goal for participation of Disadvantaged Business Enterprises (DBE) is 10%. For the contract goal please refer to the specific solicitation document.

B. The contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this DOT-assisted contract. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the Port Authority deems appropriate. Each subcontract the contractor signs with a subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b)).

C. The contractor is required to pay its subcontractors performing work related to this contract for satisfactory performance of that work no later than 30 days after the contractor’s receipt of payment for that work from the Port Authority. In addition, is required to return any retainage payments to those subcontractors within 30 days after incremental acceptance of the subcontractor’s work by the Port Authority and contractor’s receipt of the partial retainage payment related to the subcontractor’s work.

D. The contractor must promptly notify Port Authority, whenever a DBE subcontractor performing work related to this contract is terminated or fails to complete its work, and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. The contractor may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of Port Authority.

BUY AMERICA CERTIFICATIONS

A bidder or offeror must submit to the FTA recipient the appropriate Buy America certification (below) with all bids or offers on FTA-funded contracts, except those subject to a general waiver. Bids or offers that are not accompanied by a completed Buy America certification must be rejected as nonresponsive. This requirement does not apply to lower tier subcontractors.

CERTIFICATION REQUIREMENT FOR PROCUREMENT OF STEEL, IRON, OR MANUFACTURED PRODUCTS (NON- ROLLING STOCK)

Certificate of Compliance with 49 U.S.C. 5323(j)(1)

The bidder or offeror hereby certifies that it will meet the requirements of 49 U.S.C. 5323(j)(1) and the applicable regulations in 49 CFR Part 661.5.

Date _____

Signature _____

Company Name _____

Title _____

Certificate of Non-Compliance with 49 U.S.C. 5323(j)(1)

The bidder or offeror hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323(j)(1) and 49 C.F.R. 661.5, but it may qualify for an exception pursuant to 49 U.S.C. 5323(j)(2)(A), 5323(j)(2)(B), or 5323(j)(2)(D), and 49 C.F.R. 661.7.

Date _____

Signature _____

Company Name _____

Title _____

**CERTIFICATION REQUIREMENT FOR PROCUREMENT OF BUSES, OTHER
ROLLING STOCK AND ASSOCIATED EQUIPMENT (ROLLING STOCK)**

Certificate of Compliance with 49 U.S.C. 5323(j)(2)(C).

The bidder or offeror hereby certifies that it will comply with the requirements of 49 U.S.C. 5323(j)(2)(C) and the regulations at 49 C.F.R. Part 661.11.

Date _____

Signature _____

Company Name _____

Title _____

Certificate of Non-Compliance with 49 U.S.C. 5323(j)(2)(C)

The bidder or offeror hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323(j)(2)(C) and 49 C.F.R. 661.11, but may qualify for an exception pursuant to 49 U.S.C. 5323(j)(2)(A), 5323(j)(2)(B), or 5323(j)(2)(D), and 49 C.F.R. 661.7.

Date _____

Signature _____

Company Name _____

Title _____

CERTIFICATION REGARDING LOBBYING PURSUANT TO 31 U.S.C. 1352

The undersigned

_____ (name of authorized officer)

certifies, to the best of my knowledge and belief, that:

- No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form LLL, "Disclosure of Lobbying, Activities" in accordance with its instructions.
- The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by, 31, U.S. C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Note: Pursuant to 31 U.S.C § 1352(c)(1)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure or failure.

The Contractor certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. § 3801, et seq., apply to this certification and disclosure, if any.

Executed this day _____ of _____, 2010

By: _____
Signature of Authorized Official

Official Name and Title of Authorized Official

FTA REQUIREMENTS

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. Section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.
 2. Identify the status of the covered Federal action.
 3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.
 4. Enter the full name, address, city, State and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.
 5. If the organization filing the report in item 4 checks "Subawardee," then enter the full name, address, city, State and zip code of the prime Federal recipient. Include Congressional District, if known.
 6. Enter the name of the federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
 7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.
 8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitations for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Included prefixes, e.g., "RFP-DE-90-001."
 9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.
 10. (a) Enter the full name, address, city, State and zip code of the lobbying registrant under the Lobbying Disclosure Act of 1995 engaged by the reporting entity identified in item 4 to influence the covered Federal action.
(b) Enter the full names of the individual(s) performing services, and include full address if different from 10(a). Enter Last Name, First Name, and Middle Initial (MI).
 11. The certifying official shall sign and date the form, print his/her name, title, and telephone number.
-

FTA REQUIREMENTS

According to the Paperwork Reduction Act, as amended, no persons are required to respond to a collection of information unless it displays a valid OMB control Number. The valid OMB control number for this information collection is OMB No. 0348-0046. Public reporting burden for this collection of information is estimated to average 10 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, DC 20503

FTA REQUIREMENTS

CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION - LOWER TIER COVERED TRANSACTIONS

1. The prospective lower tier participant,

_____, certifies by submission of this bid or proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

3. The prospective lower tier participant shall provide immediate written notice to the Authority (and the Contractor, if applicable) if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

Executed this day _____ of _____, 2011 _____.

BY SIGNATURE OF AUTHORIZED OFFICIAL

NAME AND TITLE OF AUTHORIZED OFFICIAL

FTA REQUIREMENTS

INSTRUCTIONS FOR COMPLETION OF CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION -LOWER TIER COVERED TRANSACTIONS

1. By signing and submitting this Proposal, the prospective lower tier participant is providing the signed certification set out on the previous page.
2. This certification is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the Authority may pursue available remedies, including suspension and/or debarment.
3. The prospective lower tier participant shall provide immediate written notice to the Authority if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The terms “covered transaction,” “debarred,” “suspended,” “ineligible,” “lower tier covered transaction,” “participant,” “persons,” “lower tier covered transaction,” “principal,” “proposal,” and “voluntarily excluded,” as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549 [49 CFR Part 29]. The Proposer may contact the Procurement Representative for assistance in obtaining a copy of those regulations.
5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized in writing by the Authority.
6. The prospective lower tier participant further agrees by submitting this proposal that it will include the “Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction,” without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List issued by U.S. General Service Administration.
8. Nothing contained in the foregoing shall be construed to require establishment of system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
9. Except for transactions authorized under sub-paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to all remedies available to the Federal Government, the Authority may pursue available remedies including suspension and/or debarment.

END OF FTA CONTRACT PROVISIONS

FEDERAL EMERGENCY MANAGEMENT AGENCY REQUIREMENTS

1.	INCORPORATION OF FEDERAL EMERGENCY MANAGEMENT AGENCY TERMS	1
2.	FEDERAL CHANGES.....	1
3.	NO FEDERAL GOVERNMENT OBLIGATIONS TO THIRD PARTIES.....	1
4.	ORGANIZATIONAL CONFLICT OF INTEREST	2
5.	CERTIFICATION - DEBARMENT AND SUSPENSION	3
6.	CERTIFICATION - LOBBYING RESTRICTIONS –CONTRACTS EXCEEDING \$100,000	4
7.	ACCESS TO RECORDS AND REPORTS	11
8.	CIVIL RIGHTS	12
9.	DAVIS-BACON AND COPELAND ANTI-KICKBACK ACTS – CONTRACTS EXCEEDING \$2000.....	13
10.	CONTRACT WORK HOURS AND SAFETY STANDARDS ACT	21
11.	ENERGY CONSERVATION.....	22
12.	CLEAN WATER REQUIREMENTS – CONTRACTS EXCEEDING \$100,000	22
13.	CLEAN AIR REQUIREMENTS – CONTRACTS EXCEEDING \$100,000	22
14.	FLY AMERICA.....	23
15.	PREFERENCE FOR RECYCLED PRODUCTS	23
16.	PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS.....	23
17.	ADA ACCESS REQUIREMENTS	24
18.	TERMINATION FOR CAUSE OR CONVENIENCE – CONTRACTS EXCEEDING \$10,000	24
19.	CHANGES TO THE CONTRACT	24
20.	FEDERAL COST PRINCIPLES	24
21.	REPORTING	24
22.	PATENTS	24
23.	COPYRIGHTS	25
24.	BUY AMERICAN REQUIREMENTS (IF APPLICABLE).....	25
	CERTIFICATION REGARDING LOBBYING PURSUANT TO 31 U.S.C. 1352	26
	STANDARD FORM LLL - DISCLOSURE OF LOBBYING ACTIVITIES.....	27
	INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES ..	28
	CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION - LOWER TIER COVERED TRANSACTIONS	30
	INSTRUCTIONS FOR COMPLETION OF CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION -LOWER TIER COVERED TRANSACTIONS	31

1. INCORPORATION OF FEDERAL EMERGENCY MANAGEMENT AGENCY TERMS

As used herein, the term “Agreement” shall mean “Contract.” This Agreement is anticipated to be partially funded by the Federal Emergency Management Agency (“FEMA”).

Anything to the contrary herein notwithstanding, all FEMA-mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Contract. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any Authority requests that would cause the Authority to be in violation of the FEMA terms and conditions.

All federal laws and regulations applicable to the receipt of FEMA grants, including, but not limited to those remedies set forth in Title 44 of the Code of Federal Regulations, Part 13 (“44 C.F.R. 13”) shall be deemed to be inserted herein and the Contract shall be read and enforced as though it were included herein. If any provision of this Contract shall be such as to effect non-compliance with any FEMA requirement, such provision shall not be deemed to form part hereof, but the balance of this Contract shall remain in full force and effect.

2. FEDERAL CHANGES

The Contractor shall at all times comply with all applicable FEMA regulations, policies, procedures and directives, as they may be amended or promulgated from time to time during the term of this Contract. Contractor’s failure to so comply shall constitute a material breach of this Contract. The most recent Federal laws, regulations, policies, and administrative practices apply to this Contract at any particular time, unless FEMA issues a written determination otherwise. All standards or limits are minimum requirements, unless modified by the FEMA.

3. NO FEDERAL GOVERNMENT OBLIGATIONS TO THIRD PARTIES

The Authority and the Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this Contract and shall not be subject to any obligations or liabilities to the Authority, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

The Contractor agrees to include the above clause in each subcontract. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

4. ORGANIZATIONAL CONFLICT OF INTEREST

- A. This Contract 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 contract may, without some form of restriction on future activities; result in an unfair competitive advantage to the Contractor.
 - 1.) The Contractor shall have access to confidential and/or sensitive Authority information in the course of contract performance. Additionally, the Contractor may be provided access to proprietary information obtained from other contracted entities during contract performance. The Contractor agrees to protect all such information from disclosure unless so authorized, in writing, by the Authority and to refrain from using such information for any purpose other than that for which it was furnished.
 - 2.) To the extent that the Contractor either (a) uses confidential and/or sensitive Authority information or proprietary information obtained from other Authority contractors to develop any form of document, report, or plan that is determined by the Authority to be the basis, in whole or in part, of any subsequent solicitation issued by the Authority or (b) develops written specifications that are used in any subsequent solicitation issued by the 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 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 contract for which the Contractor was ineligible to compete.
- B. The Contractor, by submitting its bid or proposal, agrees to the above stated conditions and terms and further agrees to perform all duties under the contract and, in doing so, not to enter into contractual agreements with Authority prime contractors and first-tier subcontractors in such a way as to create an organizational conflict of interest.
- C. If the Authority determines that the Contractor has violated any term of this numbered clause, the Authority may take any appropriate action available under the law or regulations to obtain redress to include, but not be limited to, requiring the Contractor to terminate any affiliation or contractual arrangement with an Authority prime contractor or first-tier subcontractor at no cost to the 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 Contract or violations of this numbered clause, or terminating this Contract, in whole or in part.

5. CERTIFICATION - DEBARMENT AND SUSPENSION

This Contract is a covered transaction for purposes of 2 C.F.R. Parts 180 and 3000. As such, the Contractor is required to verify that none of the Contractor, its principals, as defined at 2 C.F.R. 180.995, or affiliates, as defined at 2 C.F.R. 180.905, are excluded or disqualified as defined at 2 C.F.R. 180.935 and 180.940.

The Contractor is required to comply with 2 C.F.R. 180, Subpart C and must include the requirement to comply with 2 C.F.R. 180, Subpart C in any lower tier covered transaction it enters into.

By signing and submitting its bid or proposal, the proposer certifies as follows:

The certification in this clause is a material representation of fact relied upon by the Port Authority of New York and New Jersey. If it is later determined that the proposer knowingly rendered an erroneous certification, in addition to remedies available to the Port Authority of New York and New Jersey, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The proposer agrees to comply with the requirements of 2 C.F.R. 180, Subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

- A. Each potential Contractor, for major third party contracts, is required to complete a certification entitled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion" for itself and its principals and requires each Subcontractor or Supplier (for Subcontracts and Supplier agreements expected to equal or exceed \$25,000) to complete a certification entitled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tiered Covered Transactions" for itself and its principals. Copies of the required Certification forms and accompanying instructions are set forth following the last paragraph of these requirements.
- B. In the event that the Contractor has certified prior to award that it is not proposed for debarment, debarred, suspended, or voluntarily excluded from covered transactions by any Federal Department or agency and such certification is found to be false, this Contract may be canceled, terminated or suspended by the Authority and the Contractor will be liable for any and all damages incurred by the Authority because of such cancellation, termination or suspension because of such false certification.
- C. The Contractor shall obtain certifications from all known potential Subcontractors and Suppliers (for which payments are expected to equal or exceed \$25,000) and submit such certifications to the address set forth in E below.
- D. Prior to the award of any Subcontracts or Supplier agreements expected to equal or exceed \$25,000, regardless of tier, any prospective Subcontractor or Supplier who has not previously submitted a certification for this Contract must execute and submit to the Contractor a certification in the form set forth following the last

FEMA Requirements

paragraph of these requirements which will be deemed a part of the resulting Subcontract and Supplier agreement.

- E. The originals of any Certifications or correspondence relating hereto shall be sent by the Contractor to the Director of Procurement, Two Montgomery Street, 3rd Floor, Jersey City, NJ, 07302.
 - F. The Contractor shall not knowingly enter into any Subcontracts or Supplier agreements with a person that is proposed for debarment, debarred, suspended, declared ineligible or voluntarily excluded from covered transactions.
 - G. The Contractor and its Subcontractors or Suppliers required to file the certification have a continuing duty to disclose, and shall provide immediate written notice to the Authority if, at any time, it learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
- 6. CERTIFICATION - LOBBYING RESTRICTIONS –CONTRACTS EXCEEDING \$100,000**

- A. Definitions as used in this Clause:
 - 1.) "Agency," as defined in 5 U.S.C. 552(f), includes Federal executive departments and agencies as well as independent regulatory commissions and Government corporations, as defined in 31 U.S.C. 9101(1). As used in the Certification set forth following the last paragraph of these requirements, it also includes any other public agency.
 - 2.) "Covered Federal action" means any of the following Federal actions:
 - a. The awarding of any Federal contract;
 - b. The making of any Federal grant;
 - c. The making of any Federal loan;
 - d. The entering into of any cooperative agreement; and
 - e. The extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement. As used in the above referenced Certification, it includes the award of the contract with which it is associated.
 - 3.) "Indian tribe" and "tribal organization" have the meaning provided in Section 4 of the Indian Self Determination and Education Assistance Act (25 U.S.C. 450B). Alaskan natives are included under the definitions of Indian tribes in that Act.

FEMA Requirements

- 4.) "Influencing or attempting to influence" means making, with the intent to influence, any communication to or appearance before an officer or employees of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any covered Federal action.
- 5.) "Local government" means a unit of government in a State and, if chartered, established, or otherwise recognized by a State for the performance of a governmental duty, including a local public authority, a special district, an intrastate district, a council of governments, a sponsor group representative organization, and any other instrumentality of a local government. It also includes a bi-state agency.
- 6.) "Officer or employee of an agency" includes the following individuals who are employed by an agency:
 - a. An individual who is appointed to a position in the Government under title 5, United States Code, including a position under a temporary appointment;
 - b. A member of the uniformed services as defined in section 101(3), title 37, United States Code;
- 7.) A special government employee as defined in Section 202, title 18, United States Code;
 - a. An individual who is a member of a Federal advisory committee, as defined by the Federal Advisory Committee Act, Title 5, United States Code Appendix 2; and
 - b. An employee of a bi-state agency.
- 8.) "Person" means an individual, corporation, company, association, authority, firm, partnership, society, State, and local government, regardless of whether such entity is operated for profit or not for profit. This term excludes an Indian tribe, tribal organization, or any other Indian Organization with respect to expenditures specifically permitted by other Federal law.
- 9.) "Reasonable Compensation" means, with respect to a regularly employed officer or employee of any person, compensation that is consistent with the normal compensation for such officer or employee for work that is not furnished to, not funded by, or not furnished in cooperation with the Federal Government.
- 10.) "Reasonable Payment" means, with respect to professional and other technical services, a payment in an amount that is consistent with the amount normally paid for such services in the private sector.

FEMA Requirements

- 11.) "Recipient" includes all contractors and subcontractors at any tier in connection with a Federal Contract. The term excludes an Indian Tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law.
- 12.) "Regularly Employed" means, with respect to an officer or employee of a person requesting or receiving a Federal Contract, an officer or employee who is employed by such person for at least one hundred and thirty (130) working days within one (1) year immediately preceding the date of the submission that initiates agency consideration of such person for receipt of such contract. An officer or employee who is employed by such person for less than one hundred and thirty (130) working days within one (1) year immediately preceding the date of the submission that initiates agency consideration of such person shall be considered to be regularly employed as soon as he or she is employed by such person for one hundred and thirty (130) working days.
- 13.) "State" means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, a territory or possession of the United States, an agency or instrumentality of a State, and a multi-state, regional, or interstate entity having governmental duties and powers.

B. Prohibition

- 1.) Section 1352 of Title 31, United States Code provides in part that no appropriated funds may be expended by the recipient of a Federal contract, grant, loan, or cooperative agreement to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any of the following covered Federal actions: the awarding of any Federal contract; the making of any Federal grant; the making of any Federal loan; the entering into of any cooperative agreement; and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement. For the purposes of the Certification included herein following the last paragraph of these requirements, it includes the award of the associated contract.
- 2.) The prohibition does not apply as follows:
 - a. Agency and legislative liaison by own employees.
 - (i) The prohibition on the use of appropriated funds, in subparagraph B.1.) of this Section, does not apply in the case of a payment of reasonable compensation made to an officer or employee of a person requesting or receiving a Federal contract or the contract associated with the certification if the payment is for agency and legislative liaison activities not directly related to a covered Federal Action.

FEMA Requirements

- (ii) For purposes of subparagraph B. 2.) a.(i) of this Section, providing any information specifically requested by an agency or Congress is allowable at any time.
 - (iii) For purposes of subparagraph B. 2.) a.(i) of this Section, the following agency and legislative liaison activities are allowable at any time only where they are not related to specific solicitation for any covered Federal action.
 - (a.) Discussing with an agency (including individual demonstrations) the qualities and characteristics of the person's products or services, conditions or terms of sales and service capabilities; and,
 - (b.) Technical discussions and other activities regarding the application or adaptation of the person's products or services for an agency's use.
 - (iv) For purposes of paragraph B. 2)a.(i) of this Section, the following agency and legislative liaison activities are allowable only where they are prior to formal solicitation of any covered Federal action:
 - (a.) Providing any information not specifically requested but necessary for an agency to make an informed decision about initiation of a covered Federal action;
 - (b.) Technical discussions regarding the preparation of an unsolicited proposal prior to its official submission; and
 - (c.) Capability presentations by persons seeking awards from an agency pursuant to the provisions of the Small Business Act, as amended by Public Law 95-507 and other subsequent amendments.
 - (v) Only those activities expressly authorized by subparagraph B. 2)a. of this Section are allowable under subparagraph B. 2)a.
- b. Professional and Technical Services by Own Employees.
- (i) The prohibition on the use of appropriated funds, in subparagraph B. of this Section, does not apply in the case of a payment of reasonable compensation made to an officer or employee of a person requesting or receiving a Federal contract or an extension, continuation, renewal, amendment, or modification of a Federal contract or the contract associated with the certification if payment is for

FEMA Requirements

professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that contract or for meeting requirements imposed by or pursuant to law as a condition for receiving that contract.

- (ii) For purposes of subparagraph B. 2.) b. (i) of this Section, "professional and technical services" shall be limited to advice and analysis directly applying any professional or technical discipline. For example, drafting of a legal document accompanying a bid or proposal by a lawyer is allowable. Similarly, technical advice provided by an engineer on the performance or operational capability of a piece of equipment rendered directly in the negotiation of a contract is allowable. However, communications with the intent to influence made by a professional (such as a licensed lawyer) or a technical person (such as a licensed accountant) are not allowable under this Section unless they provided advice and analysis directly applying their professional or technical expertise and unless the advice or analysis is rendered directly and solely in the preparation, submission or negotiation of a covered Federal action. Thus, for example, communications with the intent to influence made by a lawyer that do not provide legal advice or analysis directly and solely related to the legal aspects of his or her client's proposal, but generally advocate one proposal over another are not allowable under this Section because the lawyer is not providing professional legal services. Similarly, communications with the intent to influence made by an engineer providing an engineering analysis prior to the preparation or submission of a bid or proposal are not allowable under this Section since the engineer is providing technical services but not directly in the preparation, submission or negotiation of a covered Federal action.
- (iii) Requirements imposed by or pursuant to law as a condition for receiving a covered Federal award include those required by law or regulation, or reasonably expected to be required by law or regulation, and any other requirements in the actual award documents.
- (iv) Only those services expressly authorized by subparagraph B. 2.) b. this Section are allowable under subparagraph B. 2.) b.

c. Reporting for Own Employees.

No reporting is required with respect to payments of reasonable compensation made to regularly employed officers or employees of a person.

d. Professional and Technical Services by Other than Own Employees.

FEMA Requirements

- (i) The prohibition on the use of appropriated funds, in subparagraph B. 1.) of this Section, does not apply in the case of any reasonable payment to a person, other than an officer or employee of a person requesting or receiving a covered Federal action, if the payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal contract or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal contract.
- (ii) For purposes of subparagraph B. 2.) d. (i) of this Section, "professional and technical services" shall be limited to advice and analysis directly applying any professional or technical discipline. For example, drafting of a legal document accompanying a bid or proposal by a lawyer is allowable. Similarly, technical advice provided by an engineer on the performance or operational capability of a piece of equipment rendered directly in the negotiation of a contract is allowable. However, communications with the intent to influence made by a professional (such as a licensed lawyer) or a technical person (such as a licensed accountant) are not allowable under this Section unless they provided advice and analysis directly applying their professional or technical expertise and unless the advice or analysis is rendered directly and solely in the preparation, submission or negotiation of a covered Federal action. Thus, for example, communications with the intent to influence made by a lawyer that do not provide legal advice or analysis directly and solely related to the legal aspects of his or her client's proposal, but generally advocate one proposal over another are not allowable under this Section because the lawyer is not providing professional legal services. Similarly, communications with the intent to influence made by an engineer providing an engineering analysis prior to the preparation or submission of a bid or proposal are not allowable under this Section since the engineer is providing technical services but not directly in the preparation, submission or negotiation of a covered Federal action.
- (iii) Requirements imposed by or pursuant to law as a condition for receiving a covered Federal award include those required by law or regulation, or reasonably expected to be required by law or regulation, and any other requirements in the actual award documents.
- (iv) Persons other than officers or employees of a person requesting or receiving a covered Federal action include consultants and trade associations.
- (v) Only those services expressly authorized by subparagraph B. 2.) d. of this Section are allowable under subparagraph B. 2.) d.

C. Disclosure

- 1.) Each person who requests or receives from the Authority a Contract with Federal assistance shall file with the Authority a certification entitled "Certification Regarding Lobbying Pursuant to 31 U.S.C. 1352," as set forth in the form that follows these requirements, that the person has not made, and will not make, any payment prohibited by subparagraph B. of this Clause. Each person who requests or receives from the Authority a Contract with Federal assistance shall file with the Authority a disclosure form entitled "Disclosure of Lobbying Activities Pursuant to 31 U.S.C. 1352" (Standard Form-LLL), as set forth in the form that follows these requirements, if such person has made or has agreed to make any payment using non-appropriated funds (to include profits from any covered Federal action), which would be prohibited under subparagraph B. of this Clause if paid for with appropriated funds.
- 2.) Each person shall file a disclosure form at the end of each calendar quarter in which there occurs any event that requires disclosure or that materially affects the accuracy of the information contained in any disclosure form previously filed by such person under subparagraph C.2) of this Section. An event that materially affects the accuracy of the information reported includes:
 - a. A cumulative increase of \$25,000 or more in the amount paid or expected to be paid for influencing or attempting to influence a covered Federal action; or
 - b. A change in the person(s) or individual(s) influencing or attempting to influence a covered Federal action; or
 - c. A change in the officer(s), employee(s), or Member(s) contacted to influence or attempt to influence a covered Federal action.
- 3.) Any person who requests or receives from a person referred to in subparagraph C.1) of this Section a subcontract exceeding \$100,000 at any tier under a Federal contract shall file a certification, and a disclosure form, if required, to the next tier above.
- 4.) All disclosure forms, but not certifications, shall be forwarded from tier to tier until received by the person referred to in subparagraph C.1) of this Section. That person shall forward all disclosure forms to the Authority.

D. Agreement

- 1.) In accepting any contract resulting from this solicitation, the person submitting the offer agrees not to make any payment prohibited by this Clause.

E. Penalties

- 1.) Any person who makes an expenditure prohibited under subparagraph A of this Clause shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure.
- 2.) Any person who fails to file or amend the disclosure form to be filed or amended if required by the Clause, shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.
- 3.) Contractors may rely without liability on the representations made by their Subcontractors in the certification and disclosure form.

F. Cost Allowability

Nothing in this Clause is to be interpreted to make allowable or reasonable any costs which would be unallowable or unreasonable in accordance with Part 31 of the Federal Acquisition Regulation. Conversely, costs made specifically unallowable by the requirements in this Clause will not be made allowable under any of the provisions of Part 31 of the Federal Acquisition Regulation.

7. ACCESS TO RECORDS AND REPORTS

Pursuant to 44 C.F.R. 13.42 and 2 C.F.R. 215.53, the Contractor agrees to provide the Authority, the FEMA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this Contract for the purposes of making audits, examinations, excerpts and transcriptions. The Contractor also agrees to provide the FEMA Administrator or his authorized representatives access to the Contractor's records and construction sites pertaining to the project.

The Contractor agrees to provide the Authority, FEMA Administrator, the Comptroller General of the United States or any of their duly authorized representatives with access to any books, documents, papers and record of the Contractor, which are directly pertinent to this Contract for the purposes of making audits, examinations, excerpts and transcriptions.

The Contractor shall make available records related to the contract to the Authority, the FEMA Administrator and the Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.

The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

The Contractor agrees to maintain all books, records, accounts and reports required under this Contract for a period of not less than three (3) years after final payment is made by the Authority and all other pending matters are closed, except in the event of litigation or settlement of claims arising from the performance of this Contract, in which case the Contractor agrees to maintain same until the Authority, the FEMA Administrator, the Comptroller General, or any of their duly

authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto.

This requirement is independent of the Authority's requirements for record retention contained elsewhere in the contract documents.

8. CIVIL RIGHTS

- A. Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, and section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FEMA may issue.

- B. Equal Employment Opportunity - The following equal employment opportunity requirements may apply to the underlying contract and subsequent subcontracts:
 - 1.) Race, Color, Creed, National Origin, Sex - (Construction contracts awarded in excess of \$10,000) - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Department of Homeland Security regulations 6 C.F.R. § 21 and 44 C.F.R § 7, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 *et seq.*, (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FEMA may issue.

 - 2.) Age - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 623, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FEMA may issue.

- 3.) Disabilities - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FEMA may issue.
- C. The Contractor also agrees to include these requirements in each subcontract related to this project, modified only if necessary to identify the affected parties.

9. DAVIS-BACON AND COPELAND ANTI-KICKBACK ACTS – CONTRACTS EXCEEDING \$2000

The Davis-Bacon and Copeland Acts are codified at 40 U.S.C 3141, *et seq.*(as supplemented by Department of Labor Regulations (29 C.F.R Part 5)) and 18 U.S.C 874. The Acts apply to grantee construction contracts and subcontracts that “at least partly are financed by a loan or grant from the Federal Government.” 40 U.S.C 3145(a), 29 C.F.R. 5.2(h), 44 C.F.R. 13.36(i)(5). The Acts apply to any construction contract over \$2,000. 40 U.S.C 3142(a), 29 C.F.R. 5.5(a). ‘Construction,’ for purposes of the Acts, includes “actual construction, alteration and/or repair, including painting and decorating.” 29 C.F.R. 5.5(a). The requirements of both Acts are incorporated into a single clause (*see* 29 C.F.R. 3.11) enumerated at 29 C.F.R. 5.5(a) and reproduced below and are applicable if this Contract is a construction contract (as delineated above) over \$2000, or over \$2500 if this Contract involves the employment of mechanics or laborers.

A. Minimum Wages

- 1.) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 C.F.R. Part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which, if applicable, is attached hereto and made a part hereof (the attachment is the most current determination), regardless of any contractual relationship which may be alleged to exist between the Contractor and such laborers and mechanics. Determinations may change during the term of the Contract, and the wages and fringe benefits required by the most recent determination of the Secretary of Labor are those to be used.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers

FEMA Requirements

or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (A)(4) of this Section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 C.F.R. Part 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classifications and wage rates conformed under paragraph (A)(2) of this Section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the Contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

- 2.)
- a. The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:
 - (i) Except with respect to helpers as defined as 29 C.F.R. 5.2(n)(4), the work to be performed by the classification requested is not performed by a classification in the wage determination;
 - (ii) The classification is utilized in the area by the construction industry;
 - (iii) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination; and
 - (iv) With respect to helpers as defined in 29 C.F.R. 5.2(n)(4), such a classification prevails in the area in which the work is performed.
 - b. If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

FEMA Requirements

- c. In the event the Contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.
 - d. The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs A (2) (b) or (c) of this Section, shall be paid to all workers performing work in the classification under this Contract from the first day on which work is performed in the classification.
- 3.) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the Contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.
- 4.) If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, provided that the Secretary of Labor has found, upon the written request of the Contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.
- 5.)
- a. The contracting officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefor only when the following criteria have been met:
 - (i) The work to be performed by the classification requested is not performed by a classification in the wage determination;
 - (ii) The classification is utilized in the area by the construction industry; and
 - (iii) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

FEMA Requirements

- b. If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.
- c. In the event the Contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination with 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.
- d. The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs A(2) (b) or (c) of this Section, shall be paid to all workers performing work in the classification under this Contract from the first day on which work is performed in the classification.

B. Withholding

The Authority shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the Contractor under this Contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the Contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, the Authority may, after written notice to the Contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

C. Payrolls and Basic Records

- 1.) Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 C.F.R. 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the Contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

- 2.)
 - a. The Contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the Authority for transmission to the Federal Emergency Management Agency. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under section 5.5(a)(3)(i) of Regulations, 29 C.F.R. part 5. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-00014-1), U.S. Government Printing Office, Washington, DC 20402. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors.

 - b. Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the Contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:
 - (i) That the payroll for the payroll period contains the information required to be maintained under section 5.5(a)(3)(i) of Regulations, 29 C.F.R. part 5 and that such information is correct and complete;
 - (ii) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has

FEMA Requirements

- been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 C.F.R. part 3;
- (iii) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.
- c. The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph C(2)(b) of this Section.
 - d. The falsification of any of the above certifications may subject the Contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.
- 3.) The Contractor or subcontractor shall make the records required under paragraph C(1) of this Section available for inspection, copying, or transcription by authorized representatives of the Federal Emergency Management Authority or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the Contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the Contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 C.F.R. 5.12.

D. Apprentices and Trainees

- 1.) Apprentices - Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the Contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated

above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a Contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the Contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator of the Wage and Hour Division of the U.S. Department of Labor determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the Contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

- 2.) Trainees - Except as provided in 29 C.F.R. 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the Contractor will no longer be permitted to utilize

FEMA Requirements

trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

- 3.) Equal employment opportunity - The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 C.F.R. Part 30.

E. Compliance with Copeland Act Requirements

The Contractor shall comply with the requirements of 29 C.F.R. Part 3, which are incorporated by reference in this Contract.

F. Subcontracts

The Contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 C.F.R. 5.5(a)(1) through (10) and such other clauses as the Federal Emergency Management Agency may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 C.F.R. 5.5.

G. Contract Termination: Debarment

A breach of the contract clauses in 29 C.F.R. 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 C.F.R. 5.12.

H. Compliance with Davis-Bacon and Related Act Requirements

All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 C.F.R. parts 1, 3, and 5 are herein incorporated by reference in this Contract.

I. Disputes Concerning Labor Standards

Disputes arising out of the labor standards provisions of this Contract shall not be subject to the general disputes clause of this Contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 C.F.R. parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the Contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

J. Certification of Eligibility –

- 1.) By entering into this Contract, the Contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the Contractor's firm is

a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 C.F.R. 5.12(a)(1).

- 2.) No part of this Contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 C.F.R. 5.12(a)(1).
- 3.) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

10. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

The Contractor shall comply with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by Department of Labor regulations (29 C.F.R Part 5). The Contract Work Hours and Safety Standards Act applies to certain grantee contracts and subcontracts under 40 U.S.C 3701(b)(1)(B)(iii) and (b)(2), 44 C.F.R. 13.36(i)(6) for prime contracts for construction, and non-construction projects that employ “laborers or mechanics on a public work.”

- A. **Overtime Requirements**
No Contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
- B. **Violation; liability for unpaid wages; liquidated damages**
In the event of any violation of the clause set forth in paragraph A of this Section the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph A of this Section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph A of this Section.
- C. **Withholding for unpaid wages and liquidated damages**
The Authority shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime

contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph B of this Section.

D. Subcontracts

The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs A through D of this Section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs A through D of this Section.

11. ENERGY CONSERVATION

The Contractor agrees to comply with the mandatory energy efficiency standards and policies within the applicable State energy conservation plans issued in compliance with the Energy Policy and Conservation Act, 42 U.S.C. §6321 et seq. The Contractor also agrees to ensure that all work performed under this Contract including work performed by a Subcontractor is in compliance with the requirements of this Section.

12. CLEAN WATER REQUIREMENTS – CONTRACTS EXCEEDING \$100,000

- A. The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C §1251 et seq.
- B. The Contractor agrees to report each violation to the Authority and understands and agrees that the Authority will, in turn, report each violation as required to assure notification to FEMA and the appropriate EPA Regional Office.
- C. The Contractor also agrees to include the requirements of this Article in all subcontracts exceeding \$100,000 issued pursuant to this Contract.

13. CLEAN AIR REQUIREMENTS – CONTRACTS EXCEEDING \$100,000

- A. The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C §7401 et seq. The Contractor agrees to report each violation to the Authority and understands and agrees that the Authority will, in turn, report each violation as required to assure notification to FEMA and the appropriate EPA Regional Office.
- B. The Contractor also agrees to include the requirements of this Clause in all subcontracts exceeding \$100,000 issued pursuant to this Contract.

14. FLY AMERICA

The Federal Government will not participate in the costs of international air transportation of any persons involved in or property acquired for this Contract unless that air transportation is provided by U.S.-flag air carriers to the extent service by U.S.-flag air carriers is available, in accordance with the International Air Transportation Fair Competitive Practices Act of 1974, as amended, 49 U.S.C. § 40118, and with U.S. GSA regulations, "Use of United States Flag Air Carriers," 41 C.F.R. §§ 301-10.131 through 301-10.143.

15. PREFERENCE FOR RECYCLED PRODUCTS

The Contractor agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recover Act (RCRA), as amended (42 U.S.C. 6962), including but not limited to the regulatory provisions of 40 C.F.R. Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 C.F.R. Part 247.

16. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS

- A. The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 *et seq.* and U.S. DOT regulations, "Program Fraud Civil Remedies," 6 C.F.R. Part 13, apply to its actions pertaining to this Project. The Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the contract or project. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.
- B. The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under this Contract, financed in whole or in part with Federal assistance, the Federal Government reserves the right to impose the penalties of 18 U.S.C. § 1001 in addition to any other remedies available under law on the Contractor, to the extent the Federal Government deems appropriate.
- C. The Contractor agrees to include the above two clauses in each subcontract related to this Contract. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

17. ADA ACCESS REQUIREMENTS

Facilities must comply with 42 U.S.C. Sections 12101 *et seq.*.

18. TERMINATION FOR CAUSE OR CONVENIENCE – CONTRACTS EXCEEDING \$10,000

Notwithstanding anything to the contrary elsewhere within this Contract, the Authority may terminate this contract, in whole or in part, at any time by written notice to the Contractor for cause or when it is in the Authority’s best interest, pursuant to 44 C.F.R. 13.36 (i)(2). In the event of termination for convenience, the Contractor shall be paid its costs, including contract close-out costs, as so provided for in the Contract, on work performed up to the time of termination for convenience.

19. CHANGES TO THE CONTRACT

The Authority reserves the right to make changes to this Contract that are within the general scope of this Contract. Any such changes shall be subject to the “Extra Work” provisions of the Contract.

20. FEDERAL COST PRINCIPLES

All costs under this Contract are subject to audit pursuant to Federal cost principles set forth in OMB Circular A-87 (or as may be revised).

21. REPORTING

Contractor shall comply with the FEMA requirements and regulations pertaining to reporting, particularly those contained in 44 CFR parts 13.40 and 13.41.

22. PATENTS

The Contractor agrees, pursuant to 44 C.F.R. 13.36 (i)(8), that all rights to inventions and/or discoveries that arise or are developed, in the course of or under this Agreement, shall belong to the Port Authority and be disposed of in accordance with the Port Authority policy. The Port Authority, at its own discretion, may file for patents in connection with all rights to any such inventions and/or discoveries.

23. COPYRIGHTS

The Contractor agrees, pursuant to 44 C.F.R. 13.36 (i)(9), that if this Agreement results in any copyrightable material or inventions, in accordance with 44 C.F.R. 13.34, FEMA reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish, or otherwise use, for Federal Government purposes: (1) the copyright in any work developed under a grant or contract; and (2) any rights of copyright to which a grantee or a contractor purchases ownership with grant support.

24. BUY AMERICAN REQUIREMENTS (IF APPLICABLE)

Contractor is required to comply with the Buy American Act (41 U.S.C. 10a et seq.).

CERTIFICATION REGARDING LOBBYING PURSUANT TO 31 U.S.C. 1352

The undersigned

_____ (name of authorized officer)

certifies, to the best of my knowledge and belief, that:

- No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form LLL, "Disclosure of Lobbying, Activities" in accordance with its instructions.
- The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by, 31, U.S. C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Note: Pursuant to 31 U.S.C § 1352(c)(I)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure or failure.

The Contractor certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. § 3801, et seq., apply to this certification and disclosure, if any.

Executed this day _____ of _____, 2013

By: _____
Signature of Authorized Official

Official Name and Title of Authorized Official

FEMA REQUIREMENTS

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. Section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.
 2. Identify the status of the covered Federal action.
 3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.
 4. Enter the full name, address, city, State and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.
 5. If the organization filing the report in item 4 checks "Subawardee," then enter the full name, address, city, State and zip code of the prime Federal recipient. Include Congressional District, if known.
 6. Enter the name of the federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
 7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.
 8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitations for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Included prefixes, e.g., "RFP-DE-90-001."
 9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.
 10. (a) Enter the full name, address, city, State and zip code of the lobbying registrant under the Lobbying Disclosure Act of 1995 engaged by the reporting entity identified in item 4 to influence the covered Federal action.
(b) Enter the full names of the individual(s) performing services, and include full address if different from 10(a). Enter Last Name, First Name, and Middle Initial (MI).
 11. The certifying official shall sign and date the form, print his/her name, title, and telephone number.
-

FEMA REQUIREMENTS

According to the Paperwork Reduction Act, as amended, no persons are required to respond to a collection of information unless it displays a valid OMB control Number. The valid OMB control number for this information collection is OMB No. 0348-0046. Public reporting burden for this collection of information is estimated to average 10 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, DC 20503

FEMA REQUIREMENTS

**CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND
VOLUNTARY EXCLUSION - LOWER TIER COVERED TRANSACTIONS**

1. The prospective lower tier participant,

_____, certifies by submission of this bid or proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

3. The prospective lower tier participant shall provide immediate written notice to the Authority (and the Contractor, if applicable) if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

Executed this day _____ of _____, 2013.

BY SIGNATURE OF AUTHORIZED OFFICIAL

NAME AND TITLE OF AUTHORIZED OFFICIAL

FEMA REQUIREMENTS

INSTRUCTIONS FOR COMPLETION OF CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION -LOWER TIER COVERED TRANSACTIONS

1. By signing and submitting this Proposal, the prospective lower tier participant is providing the signed certification set out on the previous page.
2. This certification is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the Authority may pursue available remedies, including suspension and/or debarment.
3. The prospective lower tier participant shall provide immediate written notice to the Authority if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The terms “covered transaction,” “debarred,” “suspended,” “ineligible,” “lower tier covered transaction,” “participant,” “persons,” “lower tier covered transaction,” “principal,” “proposal,” and “voluntarily excluded,” as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549 [2 C.F.R. Part 3000]. The Proposer may contact the Procurement Representative for assistance in obtaining a copy of those regulations.
5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized in writing by the Authority.
6. The prospective lower tier participant further agrees by submitting this proposal that it will include the “Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction,” without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List issued by U.S. General Service Administration.
8. Nothing contained in the foregoing shall be construed to require establishment of system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
9. Except for transactions authorized under sub-paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to all remedies available to the Federal Government, the Authority may pursue available remedies including suspension and/or debarment.

P.A. Agreement #
DATE

FIRM NAME
ADDRESS
CITY, STATE ZIP

Attention: Contact Name, Title

SUBJECT: INDEFINITE QUANTITY CONTRACT (IQC) FOR THE PERFORMANCE OF EXPERT PROFESSIONAL ARCHITECTURAL AND ENGINEERING SERVICES FOR THE DESIGN OF FEDERALLY FUNDED SUPER STORM SANDY RELATED REPAIR AND RESILIENCY PROJECTS ON AN "AS NEEDED" BASIS DURING 2013 - 2017

Dear Contact,

1. The Port Authority of New York and New Jersey ("Authority" or "Port Authority"), hereby offers to retain <FIRM NAME> ("the Consultant" or "you") to provide Expert Professional Architectural and Engineering Services for the Design of Federally Funded Super Storm Sandy related Repair and Resiliency Projects on an "As Needed" Basis ("Services" or "the Project") as more fully set forth in "Attachment A – Scope of Services," which is attached hereto and made a part hereof.

For the purpose of administering this Agreement, the Director has designated ****, <TITLE>, or other such individual as hereafter designated, to act as his/her duly authorized representative. The Project Manager for this project is <NAME>, at tel. (***) ***-****, or email address: *****@panynj.gov.

2. This Agreement shall be signed by you, and the Director of Procurement.

As used herein:

"Agreement" shall mean the writings setting forth the Scope of Services, terms and conditions for the procurement of Services, as defined hereunder, and shall include but not be limited to the Request for Proposals (RFP) and any other attachments, endorsements, schedules, exhibits, drawings, the Authority's acceptance and any written addenda issued over the name of the Authority's Manager, Procurement Department.

"Chief Engineer" shall mean the Authority's Chief Engineer that operates various facilities of the Port Authority at which the services hereunder are to be performed, or his successor in duties for the purpose of this Agreement, acting personally or through one of his authorized representatives for the purpose of this Agreement.

“Manager” shall mean the Program Manager, Project Integration, Project Manager or his designee or his successor in duties for the purpose of this Agreement, acting personally or through his duly authorized representative for the purpose of this Agreement.

The term of this Agreement shall commence on XXXXX, XX, 201* (“Effective Date”) and shall continue for a period four (4) years.

3. In order to effectuate the policy of the Authority, the services provided by the Consultant shall comply with all provisions of federal, state, municipal, local and Departmental laws, ordinances, rules, regulations, and orders which would affect or control said services as if the services were being performed for a private corporation, unless the Authority standard is more stringent, in which case the Authority standard shall be followed, or unless the Consultant shall receive a written notification to the contrary signed by the Chief Engineer personally, in which case the requirements of said notification shall apply.

This Agreement is subject to the insurance requirements set forth in Exhibit F, Insurance Requirements.

4. The Consultant shall meet and consult with Authority staff as requested by the Chief Engineer in connection with the services to be performed herein. Any Contract Drawings and Technical Specifications and other items to be submitted or prepared by the Consultant hereunder shall be subject to the review of the Chief Engineer. The Chief Engineer may disapprove, if in his sole opinion said items are not in accordance with the requirements of this Agreement and sound engineering principles or are impractical, uneconomical, or unsuited in any way for the purpose for which the contemplated construction is intended. If any of the said items, or any portion thereof, are so disapproved, the Consultant shall forthwith revise them until they meet the approval of the Chief Engineer, but the Consultant will not be compensated under any provision of this Agreement for performance of such revisions. No approval, disapproval or omission to approve or disapprove, however, shall relieve the Consultant of its responsibility, if any, under this Agreement to furnish in accordance with an agreed upon schedule, a complete, practical, economical design and Contract Drawings and Technical Specifications, and corrections and changes therein, which are best suited for the contemplated construction, done in accordance with sound engineering principles and signed and sealed by a licensed Professional Engineer.

5. When the services to be performed by the Consultant include the preparation of computer aided design and drafting (CADD) documents, said documents must be prepared using the latest available revision of Autodesk's "AUTOCAD" software or as directed by the Chief Engineer prior to the performance of specific services. All drawings shall be prepared in strict conformance to the Port Authority CADD Standards. All submissions of CADD drawings shall be submitted to the Authority on compact discs, uploaded to the Project Website, or as otherwise required in DWG and DWF format in accordance with the Port Authority CADD Standards.

6. Upon issuance of a Task Order, you shall not continue to render services under this Agreement after the point at which the total amount to be paid to you hereunder, in accordance with Paragraph 7 below, including reimbursable expenses, reaches the Not to Exceed amount of

each Task Order, unless you are specifically authorized in writing to so continue by the Chief Engineer. If no such authorization is issued, the Task Order and/or this Agreement shall be terminated without further obligation by either of the parties as to services not yet performed, but you shall be compensated as hereinafter provided for services already completed. It is understood, however, that this limitation shall not be construed to entitle you to the minimum compensation in each Task Order.

7. As full compensation for all of your services and obligations in connection with Task Orders awarded under this Agreement, the Authority will pay you the total of the amounts computed as set forth below, subject to the limits on compensation and provisions set forth in Paragraph 6 above. Subject to the terms and conditions below, travel time is not reimbursable unless approved in advance and in writing by the Authority.

- A. Consultant's Fixed Fee. For Consultant's satisfactory performance of its Services under each Task Order and all of its obligations in connection with this Agreement, the Port Authority will pay, subject to pro-rata portion thereof due to any suspension or termination of this Agreement as permitted herein, the Consultant a fixed fee ("Consultant's Fixed Fee" or "Fee"), a negotiated not-to-exceed amount representing Consultant's profit for the Task Order. In no event shall a Change Order for additional services that are within the general scope of the Task Orders awarded under this Agreement result in an increase in the Consultant's Fixed Fee. Payment of the Consultant's Fixed Fee/profit shall be made as outlined in each Task Order and will be made either as a percentage of the total labor and overhead on a monthly basis and/or upon completion of schedule milestones noted in each Task Order, but in no event shall the total amount exceed the total amount stated therein.
- B. Direct Personnel Costs. Consultant will be reimbursed for the actual hourly rates of Consultant's full-time employees ("Personnel") for Services performed in each Task Order awarded under this Agreement. The Task Order Pricing and Compensation Proposal shall include a schedule of the actual hourly labor rates and titles of all Consultant's Personnel assigned to the Task Order that have been approved by the Port Authority, including an organizational chart showing the names and titles of all staff working on the Task Order.
 - 1) The Port Authority reserves the right to audit and verify the hourly rate and time billed for the Services of each such employee. It is understood that each employee shall bill time to the Task Order only for work actually performed on the Task Order and shall not bill time to the Task Order for holidays, vacation days, sick leave, personal days, maternity, medical or family leave, or for any other item included in the Overhead Rate, as set forth below.
 - 2) When requesting salary or billing rate adjustments for one or more of its personnel, the Consultant shall submit employee's name, title, current direct hourly rate or billing rate, proposed new direct hourly rate or billing rate, resulting percentage increase, effective date and reason for the requested change setting forth in detail any increased costs to the Consultant of providing the Services under this Agreement which has given rise to the request for increased salary. For adjustments submitted after the Effective Date of this Agreement, it is the intention of the Port Authority to

grant an increase in pay if Consultant demonstrates compliance with all of the following conditions: that an increase in salary is (a) in accordance with the program of periodic merit and cost of living increases normally administered by the Port Authority; (b) warranted by increased costs of providing Services under this Agreement; (c) based upon increases in salaries and billing rates which are generally applicable to all of Consultant's clients; and (d) in accordance with the Authority's salary rate increase policy for the current year for Port Authority employees possessing comparable skills and experience. If, during any calendar year, the Port Authority limits are not available to Consultant in a timely fashion, increases falling within such limits may be approved retroactively, as appropriate. The amount of increase in salary or billing rate, if any, to be applicable under this Agreement shall, therefore, in all cases, be finally determined by the Chief Engineer or his designee, in his/her sole and absolute discretion.

- C. Overhead Rate. The Overhead Rate for each Task Order shall be applied to the Direct Personnel Costs as permitted above. Computation of the Overhead Rate shall include the following indirect cost items: applicable taxes, employee benefits, insurance payments, maternity leave, paternity leave, medical leave, family leave, disability benefits, bonuses, overtime pay, premium pay, parking and car allowance, fringe benefits, retirement plans, union dues, contributions and assessments required by Law, and collective bargaining, and corporate expenses as otherwise allowed in compliance with 48 CFR Part 31.
- 1) An Overhead Rate is applicable for a one-year accounting period ("Provisional Overhead Rate"). Ninety (90) days prior to the expiration of the applicable accounting period, the Consultant shall submit one of the following: i) a current indirect cost audit (not currently under dispute) by a cognizant federal or state government agency; ii) a new calculation by the Consultant of the Overhead Rate in accordance with this Section 8.C; or iii) the Consultant shall submit to an audit of the Overhead Rate by the Authority. Should a subsequent audit rate differ from the rate set forth in this subparagraph, said rate shall be adjusted by an Agreement modification.
 - 2) The Overhead Rate shall represent reimbursement to Consultant for all other costs incurred by Consultant for such Personnel provided, however, that for purposes of this Paragraph 8.C only, the term "Personnel" shall exclude any non exempt personnel eligible to receive overtime pay who belong to a labor union, perform work on the project under the terms of a collective bargaining agreement and in accordance with the Agreement documents, and are paid wages for such work. For the avoidance of doubt, the term "Personnel" for purposes of this Section 8.C, shall include members of a labor union who are exempt from receiving overtime pay and who render superintendent services on any Task Order.
 - 3) The Overhead Rate shall not apply to partners, principals or temporary employees of Consultant.
 - 4) The Consultant's actual Overhead Rate(s) during the term of this Agreement shall be subject to an audit by the Port Authority. The Authority reserves the right to retroactively adjust the Consultant's compensation in the event that a final audit of

- overhead indicates that the actual rate applicable during the Agreement is less than the rate(s) used during the Agreement. The Consultant is responsible for monitoring its actual rates to ensure compliance with the Provisional Overhead Rate applicable at the time.
- 5) The Overhead Rate shall not include any element that is attributable to the Consultant's Fixed Fee or addressed as a reimbursable expense or cost under this Agreement.
- D. Costs of Subconsultants. Consultant shall be reimbursed for the costs of any subconsultant, which shall include only an amount equivalent to the aggregate amount actually paid to said subconsultant by the Consultant. Under no circumstances shall any subconsultant contract, at any tier, contain a cost-plus-percentage-of-cost compensation structure.
- E. Reimbursable Expenses. The Consultant shall also be compensated at an amount equal to the out-of-pocket expense for each Task Order, approved in writing and in advance by the Chief Engineer, necessarily and reasonably incurred, and actually paid by you in the performance of your services hereunder. Out-of-pocket expenses are expenses that are unique to the performance of your services under this Agreement and generally contemplate the purchase of outside ancillary services, except that for the purpose of this Agreement, out-of-pocket expenses do include amounts for long distance telephone calls; rentals of equipment; travel and local transportation; and meals and lodging on overnight trips.
- 1) Notwithstanding the above the Authority will pay an amount approved in advance by the Chief Engineer and computed as follows for the reproduction of submittal drawings, specifications and reports:
 - a. If the Consultant uses its own facilities to reproduce such documents, an amount computed in accordance with the billing rates the Consultant customarily charges for reproduction of such documents on agreements such as this, or
 - b. If the Consultant uses an outside vendor for the reproduction of such documents, the actual, necessary and reasonable amounts for the reproduction of such documents.
 - 2) The expenses do not include expenses that are usually and customarily included as part of the Consultant's overhead. For the purposes of this Agreement out-of-pocket expenses do not include amounts for mailing and delivery charges, typing, utilization of computer systems, computer aided design and drafting (CADD), cameras, recording or measuring devices, flashlights and other small, portable equipment, safety supplies, phones, telephone calls, electronic messaging including facsimile, or expendable office supplies. Unless otherwise indicated, required insurance is not a reimbursable expense.
 - 3) When the Consultant uses its employee's personal vehicle to provide services within the Port District, the Consultant will be reimbursed for travel expenses beyond normal commuting costs at a rate not higher than the Annual Federal Mileage

Reimbursement Rate (as determined by the Internal Revenue Service) per mile traveled by auto.

- 4) When the Consultant is asked to provide services outside the Port District, the actual cost of coach transportation as well as the cost for hotel accommodations and meals shall be reimbursable hereunder when approved in advanced in writing by the Chief Engineer. If the Consultant chooses to travel each day to an assignment, where it would be more economical to take a hotel room near the assignment, the maximum reimbursable travel expenses shall not exceed the daily cost for meals and lodging. Reimbursable travel as provided herein shall be limited to one round trip per week's service except when otherwise approved in advance and in writing by the Chief Engineer. The total number of reimbursable travel hours (for travel outside the Port District) will be calculated by reducing the actual travel time by three hours. The cost for all meals and lodging on approved overnight trips are limited to the amounts established by the United States General Services Administration for that locality. See www.gsa.gov.
- 5) You shall obtain the Chief Engineer's written approval prior to making expenditures for out-of-pocket expenses in excess of \$1,000 per specific expenditure and for all overnight trips, which are reimbursable expenditures as set forth above. You shall substantiate all billings for out-of-pocket expenses in excess of \$25 with receipted bills and provide said receipts with the appropriate billing.
- 6) As used herein:

"Port District" is an area comprised of about 1,500 square miles in the States of New York and New Jersey, 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.

"Salaries paid to employees" or words of similar import shall mean salaries and amounts actually paid (excluding payments or factors for holidays, vacations, sick time, bonuses, profit participations and other similar payments) to Architects, Engineers, Designers, Drafters or other professional and technical employees of the Consultant for time actually spent directly in the performance of technical services hereunder and recorded on daily time records which have been approved by the employee's immediate supervisor, excluding the time of any employee of the Consultant to the extent that the time of such employee of the Consultant is devoted to typing/word processing, stenographic, clerical or administrative functions. Such functions shall be deemed to be included in the Overhead Rate.

8. Changes

The Authority reserves the right to make changes to the Task Order Work, Task Order Schedule or terms of this IQC Agreement. The Consultant shall diligently perform all such work without delay even if the Consultant does not agree with any schedule or cost decision of the Authority relating to changed Work. The Consultant must issue any related claim to the Authority within five (5) days of the Authority's request to perform the change. The

claim will be considered by the Authority and, if accepted in whole or part, the Authority will issue a Change Order. The provisions of the Agreement relating to the Work and its performance shall apply without exception to any changed or additional Work required and to the performance thereof, except as may be otherwise provided by written agreement between the Authority and the Consultant. The Chief Engineer or his authorized representative must authorize in writing the changed or additional Work and/or any change to the Amount Obligated under the Task Order before the changed or additional Work is performed and before the Consultant may be reimbursed for such changed or additional Work.

9. Dispute Resolution.

- A. To resolve all disputes and to prevent litigation, the parties to this Agreement authorize the Authority's Chief Engineer 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 Agreement (including claims in the nature of breach of contract or fraud or misrepresentation before or subsequent to acceptance of Consultant's proposal and claims of a type that are barred by the provisions of this Agreement). The Chief Engineer's decision with respect to any question or dispute under this Paragraph shall be conclusive, final, and binding on the parties. The Chief Engineer's decision may be based on such assistance as the Chief Engineer may find desirable.
- B. The effect of the Chief Engineer's decision with respect to any question or dispute under this Paragraph shall not be impaired or waived by any negotiations or settlement offers in connection with the question or dispute decided, whether or not the Chief Engineer participated therein, or by any prior decision of the Port Authority or others, which prior decision shall be deemed subject to review, or by any termination or cancellation of this Agreement.
- C. All such questions or disputes under this Paragraph shall be submitted in writing by the Consultant or the Port Authority to the Chief Engineer for decision, together with all evidence and other pertinent information in regard to such question or dispute, in order that a fair and impartial decision may be made. The other party shall have a reasonable time to respond. The Port Authority may join any other entity to the dispute that has a valid dispute resolution agreement with the Port Authority. In any action against the Port Authority relating to any such question or dispute, the Consultant must allege in its 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 Chief Engineer.

10. You shall keep, and shall cause any subconsultants under this Agreement to keep, daily records of the time spent in the performance of Services hereunder by all persons whose salaries or amounts paid thereto will be the basis for compensation under this Agreement as well as records of the amounts of such salaries and amounts actually paid for the performance of such services and records and receipts of reimbursable expenditures hereunder, and, notwithstanding any other provisions of this Agreement, failure to do so shall be a conclusive waiver of any right

to compensation for such services or expenses as are otherwise compensable hereunder. The Authority shall have the right to audit all such records.

The Authority shall have the right to inspect your records, and those of your subconsultants, pertaining to any compensation to be paid hereunder, such records to be maintained by you and your subconsultants for a period of one year after completion of services to be performed under this Agreement.

11. On or about the fifteenth day of each month, you shall render an invoice for services performed and reimbursable out-of-pocket expenses incurred in the prior month, accompanied by such records and receipts as required, to the Project Manager. Each invoice shall bear your taxpayer number and the purchase order number provided by the Engineer. Upon receipt of the foregoing, the Chief Engineer will estimate and certify to the Authority the approximate amount of compensation earned by you up to that time. As an aid to you, the Authority shall, within fifteen days after receipt of such certification by the Chief Engineer, advance to you by check the sum certified minus all prior payments to you for your account.

12. Termination.

- A. For Cause. The Authority may at any time for cause terminate this Agreement as to any services not yet rendered, and may terminate this Agreement in whole or in part. You shall have no right of termination as to any services under this Agreement without just cause. Termination by either party shall be by certified letter addressed to the other at its address hereinbefore set forth. Should this Agreement be terminated in whole or in part by either party as above provided, you shall receive no compensation for any services not yet performed, but if termination is without fault on your part, the Authority will pay you as the full compensation to which you shall be entitled in connection with this Agreement the amounts computed as above set forth for services completed to the satisfaction of the Chief Engineer through the date of termination, minus all prior payments to you.
- B. For Convenience. In addition to all other rights of revocation or termination hereunder and notwithstanding any other provision of this Agreement, the Port Authority may terminate this Agreement and the rights of the Consultant hereunder without cause at any time upon five (5) days written notice to the Consultant and in such event this Agreement shall cease and expire on the date set forth in the notice of termination as fully and completely as though such date 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 Consultant 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.

13. You shall not issue or permit to be issued any press release, advertisement, or literature of any kind, which refers to the Authority or the services performed in connection with this Agreement, unless you first obtain the written approval of the Chief Engineer. Such approval may be withheld if for any reason the Chief Engineer believes that the publication of such information would be harmful to the public interest or is in any way undesirable.

14. Under no circumstances shall you or your subconsultants communicate in any way with any contractor, 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 Chief Engineer, provided, however that data from manufacturers and suppliers of material shall be obtained by you when you find such data necessary unless otherwise instructed by the Chief Engineer.

15. Any services performed for the benefit of the Authority at any time by you or on your behalf, even services in addition to those described herein, 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 express 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.

16. No certificate, payment (final or otherwise), acceptance of any work or any other act or omission of the Authority or the Chief Engineer shall operate to release you from any obligations under or upon this Agreement, or to estop the Authority from showing at any time that such certificate, payment, acceptance, act or omission was incorrect, or to preclude the Authority from recovering any money paid in excess of that lawfully due, whether under mistake of law or fact, or to prevent the recovery of any damages sustained by the Authority.

17. Mylars of the contract drawings, originals of technical specifications, estimates, reports, records, data, charts, documents, renderings, computations, computer tapes or disks, and other papers of any type whatsoever, whether in the form of writing, figures or delineations, which are prepared or compiled in connection with this Agreement, shall become the property of the Authority, and the Authority shall have the right to use or permit the use of them and any ideas or methods represented by them for any purpose and at any time without other compensation than that specifically provided herein. The Consultant 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 of this Agreement or not. This Agreement shall not be construed, however, to require the Consultant to obtain for the Consultant and the Authority the right to use any idea, design, method, material, equipment or other matter which is the subject of a valid patent, unless owned by the Consultant, or subconsultant, or an employee of either. Whether or not your Proposal is accepted by the Authority, it is agreed that all information of any nature whatsoever which is in any way connected with the services performed in connection with this Agreement, regardless of the form of which has been or may be given by you or on your behalf, whether prior or subsequent to the execution of this Agreement, whether to the Authority, its Commissioners, officers, agents or employees, is not given in confidence and may be used or disclosed by or on behalf of the Authority without liability of any kind, except as may arise under valid existing or pending patents, if any.

18. If research or development is furnished in connection with the performance of this Agreement and if in the course of such research or development patentable subject matter is produced by the Consultant, his officers, agents, employees, or subconsultants, 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 Consultant 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 Authority and the Consultant, 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 agreement may be transferred by the Authority to its successors, immediate or otherwise, in the operation or ownership of any real or personal property now or hereafter owned or operated by the Authority, but such license shall not be otherwise transferable.

19. You shall promptly and fully inform the Chief Engineer in writing of any patents or patent disputes, whether existing or potential, of which you have knowledge, relating to any idea, design, method, material, equipment or other matter related to the subject matter of this Agreement or coming to your attention in connection with this Agreement.

20. This Agreement is based upon your special qualifications for the services herein contemplated, and any assignment, subletting or other transfer of this Agreement or any part hereof or of any moneys due or to become due hereunder without the express consent in writing of the Authority shall be void and of no effect as to the Authority, provided, however, that you may sublet services to subconsultants with the express consent in writing of the Chief Engineer. All persons to whom you sublet services, however, shall be deemed to be your agents and no subletting or approval thereof shall be deemed to release you from your obligations under this Agreement or to impose any obligation on the Authority to such subconsultant or give the subconsultant any rights against the Authority.

21. Disadvantaged Business Enterprise Program.

A. The requirements for the Disadvantaged Business Enterprise (DBE) program are set forth in U.S. Department of Transportation (DOT) Title 49 Code of Federal Regulations Part 26 (49 CFR Part 26) and is incorporated into this Agreement by reference.

B. The DBE participation goal for this Agreement is 17.0 %.

C. This regulation applies to all agreements that include any federal funds; therefore, the Consultant agrees to include the clauses cited below in all agreements for this project and to enforce such clauses. With regards to paragraph 2) below, the Consultant agrees to pay each subcontractor within 7 days of receipt of payment from the Authority.

D. The Consultant agrees to include the following clauses (printed in *Italics*) in all agreements and subcontracts:

1) The Consultant or subconsultant shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract and shall carry out the applicable requirements of 49 CFR Part 26 in the award and administration of DOT assisted agreements. This regulation is incorporated into this agreement by reference. Failure by the Consultant to carry out these requirements is a material breach of this Agreement, which may result in the

termination of this Agreement or such other remedy, as the Authority deems appropriate. This provision shall likewise apply to each subconsultant at each tier.

2) The Consultant agrees to pay each subconsultant on this project for satisfactory performance of its subcontract no later than seven (7) days from the receipt of each payment received from the Authority or within such later period as is provided in the subcontract.

3) 49 CFR Part 26 is incorporated into this Agreement by reference.

4) The DBE participation goal for this agreement is 17.0%.

5) The obligation of the Consultant is to make good faith efforts to meet the Agreement DBE participation goal of 17.0%. The Consultant can demonstrate that it has done so by meeting the Agreement goal or documenting good faith efforts. See Section 26.53 and Appendix A of 49CFR Part 26 for descriptions and discussions of good faith efforts. The Authority is responsible for determining whether a Consultant that has not met the Agreement goal has documented sufficient good faith efforts to be regarded as responsible.

E. Assistance is available from the Authority's Office of Business Diversity and Civil Rights to identify DBE firms and to answer any questions related to the preparation and submission of the DBE Participation Plan (Appendix 2). Questions can be addressed to Robert Foreman at (212) 435-7818 or email at rforeman@panynj.gov. The Authority through the New York State and New Jersey Uniform Certification Programs (UCP) maintains Directories identifying all DBE firms. The Directories list the DBE firm's name, address, phone number, date of the most recent certification, and the type of work the firm has been certified to perform as a DBE. Each state UCP revises the Directory periodically. The Authority makes the Directories available as follows:

1) New York State UCP Directory: www.nysucp.net

2) New Jersey UCP Directory: www.njucp.net

By proposing on this Agreement, the Consultant assures the Authority that it will meet the foregoing goal and shall submit the DBE Goals Statement form (Appendix D-1) with its Proposal. If the Consultant determines he cannot make this assurance he may nevertheless submit a proposal but in such event he shall note on the DBE Goals Statement form the percentage of DBE participation he anticipates, including documentation supporting the good faith efforts made to achieve the goals set forth in the Agreement.

The Consultant shall submit with each Task Order Proposal the DBE Participation Plan and Affirmation Statement (Appendix D-2) for each DBE firm it intends to use. The DBE Participation Plan and Affirmation Statement shall provide the name and address of each DBE firm, a description of the work to be performed, the dollar value of each DBE subcontract/subconsultant and the signature affirmation from each DBE firm participating the Task Order.

A firm that fails to meet the DBE goal for a Task Order and that fails to demonstrate to the Authority that the firm has made good faith efforts to meet the DBE goal shall not be eligible to be awarded the Task Order. The following are illustrative of good faith efforts:

A. Attendance at a pre-bid meeting, if any, scheduled by the Authority to inform DBEs of subcontracting/subconsulting opportunities under a given solicitation;

- B. Advertisement in general circulation media, trade association publications and minority-focused media for at least 20 days before bids or proposals are due. If 20 days are not available, publication for a shorter reasonable time is acceptable;
- C. Written notification to DBEs that their interest in the Task Order is solicited;
- D. Efforts made to select portions of the work proposed to be performed by DBEs in order to increase the likelihood of achieving the stated goal;
- E. Efforts to negotiate with DBEs for specific sub-bids/sub-proposals including at a minimum;
 - 1. The names, addresses, and telephone numbers of DBEs that were contacted;
 - 2. A description of the information provided to DBEs regarding the Contract Drawings and Specifications for portions of the work to be performed; and
 - 3. A statement of why additional agreements with DBEs were not reached.

22. NOTIFICATION OF SECURITY REQUIREMENTS

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

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

- Execution of Non-Disclosure and Confidentiality Agreements and Acknowledgments
- Consultant/Subconsultant identity checks and background screening

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

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

As of January 29, 2007, the Secure Worker Access Consortium (S.W.A.C.) is the only Port Authority approved provider to be used to conduct background screening and personal

identity verification, except as otherwise required by federal law and/or regulation (such as the Transportation Worker Identification Credential for personnel performing in secure areas at Maritime facilities). Information about S.W.A.C., instructions, corporate enrollment, online applications, and location of processing centers is located at <http://www.secureworker.com>, or S.W.A.C. may be contacted directly at (877) 522-7922 for more information and the latest pricing. If approved by the Project Manager, the cost for said background checks for staff that pass and are granted a credential shall be reimbursable to the Consultant (and its subconsultants) as an out-of-pocket expense as provided herein. Staff that are rejected for a credential for any reason are not reimbursable.

- Issuance of Photo Identification Credential

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

Staff may be required to produce not less than two forms of valid/current government issued identification having an official photograph and an original, non-laminated social security card for identify and SSN verification.

- Designated Secure Areas

Services under the Agreement may be required in designated secure areas, as the same may be designated by the Authority ("Secure Areas"). The Authority shall require the observance of certain security procedures with respect to Secure Areas, which may include the escort to, at, and/or from said high security areas by security personnel. All personnel that require access to designated Secure Areas who are not under escort by an authorized individual will be required to undergo background screening and personal identity verification.

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

- Access control, inspection, and monitoring by security guards

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

- Compliance with the Port Authority Information Security Handbook

The Agreement may require access to Port Authority information considered Confidential Information ("CI") as defined in the Port Authority Information Security Handbook ("Handbook"), dated October, 2008, corrected as of February, 2009, and as may be further amended. The Handbook and its requirements are hereby incorporated into this Agreement and will govern the possession, distribution and use of CI. Protecting CI and other sensitive information requires the application of uniform safeguarding measures to prevent unauthorized disclosure and to control any authorized disclosure of this information within the Authority or when released by the Authority to outside entities. The Handbook can be obtained upon request or at: <http://www.panynj.gov/business-opportunities/pdf/Corporate-Information-Security-Handbook.pdf>

- Audits for Compliance with Security Requirements

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

At the direction of the Authority, you shall be required to have your employees, subconsultants and their employees execute Authority approved non-disclosure agreements.

23. CONFIDENTIAL INFORMATION

- A. Confidential information shall mean all information disclosed to the Consultant or the personnel provided by the Consultant hereunder which relates to the Authority'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 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 Consultant's Services under this Agreement.

- 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 Consultant shall hold all such confidential information in trust and confidence for the Authority, and agrees that the Consultant and the personnel provided by the Consultant hereunder shall not, during or after the termination or expiration of this Agreement, disclose to any person, firm or corporation or 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 Consultant and the personnel provided by the Consultant 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 Agreement. The Consultant and the personnel provided by the Consultant 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 Consultant 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 Consultant has knowledge, relating to any idea, design, method, material, equipment or other matter related to this Agreement or coming to the Consultant's attention in connection with this Agreement.

24. The Consultant assumes the following distinct and several risks to the extent arising from the negligent or willful intentional acts or omissions of the Consultant or its subconsultants in the performance of services hereunder:

- A. The risk of loss or damage to Authority property arising out of or in connection with the performance of services hereunder;
- B. The risk or loss or damage to any property of the Consultant or its subconsultants arising out of or in connection with the performance of services hereunder;
- C. The risk of claims, arising out of or in connection with the performance of services hereunder, whether made against the Consultant or its subconsultants or the Authority, for loss or damage to any property of the Consultant's agents, employees, subcontractors, subconsultants, materialmen or others performing services hereunder;

- D. The risk of claims, just or unjust, by third persons made against the Consultant or its subconsultants or the Authority on account of injuries (including wrongful death), loss or damage of any kind whatsoever arising in connection with the performance of services hereunder including claims against the Consultant or its subconsultants or the Authority for the payment of workers' compensation, whether such claims are made and whether such injuries, damage and loss are sustained at any time both before and after the completion of services hereunder.

The Consultant shall indemnify the Authority against all claims described in subparagraphs A through D above and for all expense incurred by it in the defense, settlement or satisfaction thereof, including expenses of attorneys. If so directed, the Consultant shall defend against any claim described in subparagraphs B, C and D above, in which event he shall not without obtaining express advance permission from the General Counsel of the Authority raise any defense involving in any way jurisdiction of the tribunal, immunity of the Authority, governmental nature of the Authority or the provisions of any statutes respecting suits against the Authority, such defense to be at the Consultant's cost.

The provisions of this 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 clause if they were named at each place above at which the Authority is named, including a direct right of action against the Consultant to enforce the foregoing indemnity, except, however, that the Authority may at any time in its sole discretion and without liability on its part cancel the benefit conferred on any of them by this clause, whether or not the occasion for invoking such benefit has already arisen at the time of such cancellation.

Neither the completion of services hereunder nor the making of payment (final or otherwise) shall release the Consultant from its obligations under this clause. Moreover, neither the enumeration in this clause or the enumeration elsewhere in this Agreement of particular risks assumed by the Consultant or of particular claims for which it is responsible shall be deemed (a) to limit the effect of the provisions of this clause or of any other clause of this Agreement 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 clause or in any other clause of this Agreement, 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.

No third party rights are created by the Agreement, except to the extent that the Agreement specifically provides otherwise by use of the words "benefit" or "direct right of action".

Inasmuch as the Authority has agreed to indemnify the Cities of New York and Newark against claims of the types described in subparagraph D above made against said cities, the Consultant's obligation under subparagraph D above shall include claims by said cities against the Authority for such indemnification.

25. CERTIFICATION OF NO INVESTIGATION (CRIMINAL OR CIVIL ANTI-TRUST), INDICTMENT, CONVICTION, DEBARMENT, SUSPENSION, DISQUALIFICATION AND DISCLOSURE OF OTHER INFORMATION

By proposing on this Agreement, each Consultant and each person signing on behalf of any Consultant certifies, and in the case of a joint proposal, each party thereto certifies as to its own organization, that the Consultant and each parent and/or affiliate of the Consultant has not:

- A. been indicted or convicted in any jurisdiction;
- B. been suspended, debarred, found not responsible or otherwise disqualified from entering into any agreement with any governmental agency or been denied a government agreement for failure to meet standards related to the integrity of the Consultant;
- C. had an agreement terminated by any governmental agency for breach of agreement 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 Proposal;
- E. had any business or professional license suspended or revoked or, within the five years prior to proposal 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, proposal 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.

26. NON-COLLUSIVE PROPOSING, AND CODE OF ETHICS CERTIFICATION, CERTIFICATION OF NO SOLICITATION BASED ON COMMISSION, PERCENTAGE, BROKERAGE, CONTINGENT OR OTHER FEES

By submitting a Proposal on this Agreement, each Consultant and each person signing on behalf of any Consultant certifies, and in the case of a joint proposal, each party thereto certifies as to its own organization, that:

- A. the prices in its proposal 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 Consultant or with any competitor;
- B. the prices quoted in its proposal have not been and will not be knowingly disclosed directly or indirectly by the Consultant prior to the official opening of such proposal to any other Consultant or to any competitor;
- C. no attempt has been made and none will be made by the Consultant to induce any other person, partnership or corporation to submit or not to submit a proposal 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 current version of the Code of Ethics in effect on the commencement date of this Agreement (a copy of which is available upon request to the individual named in the clause hereof entitled "Consultant'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 Consultant for the purpose of securing business has been employed or retained by the Consultant to solicit or secure this Agreement on the understanding that a commission, percentage, brokerage, contingent, or other fee would be paid to such person or selling agency;
- F. the Consultant 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 Agreement; and
- G. no person or organization has been retained, employed or designated on behalf of the Consultant to impact any Authority determination with respect to (i) the solicitation, evaluation or award of this Agreement; or (ii) the preparation of specifications or request for submissions in connection with this Agreement.

The foregoing certifications, shall be deemed to be made by the Consultant as follows:

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

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

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

In any case where the Consultant cannot make the foregoing certifications, the Consultant shall so state and shall furnish with the signed proposal a signed statement, which sets forth in detail the reasons therefor. If the Consultant is uncertain as to whether it can make the foregoing certifications, it shall so indicate in a signed statement furnished with its proposal, setting forth in such statement the reasons for its uncertainty. With respect to the foregoing certification in paragraph "26G.", if the Consultant cannot make the certification, it shall provide, in writing, with the signed proposal: (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 Agreement, 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 Agreement. As a result of such disclosure, the 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 Consultant may be able to make the foregoing certifications at the time the proposal is submitted, the Consultant shall immediately notify the Authority in writing during the period of irrevocability of proposals and the term of the Agreement, if Consultant is awarded the Agreement, 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 Consultant 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 Agreement. In the event that the Authority should determine at any time prior or subsequent to the award of this Agreement that the Consultant has falsely certified as to any material item in the foregoing certifications, has failed to immediately notify the Authority of any change in circumstances which might make it unable to make the foregoing certifications, might render any portion of the certifications previously made invalid, or require disclosure, or has willfully or fraudulently furnished a signed statement which is false in any material respect, or has not fully and accurately represented any circumstance with respect to any item in the foregoing certifications required to be disclosed, the Authority may determine that the Consultant is not a responsible Consultant with respect to its proposal on the Agreement or with respect to future proposals on Authority agreements and may exercise such other remedies as are provided to it by the Agreement with respect to these matters. In addition, Consultants 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.). Consultants are also advised that the inability to make such certification will not in and of itself disqualify a Consultant, and that in each instance the Authority will evaluate the reasons therefor provided by the Consultant.

Under certain circumstances the Consultant may be required as a condition of this Agreement 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 Authority. Said Monitor shall be charged with, among other things, auditing the actions of the Consultant to determine whether its business practices and relationships indicate a level of integrity sufficient to permit it to continue business with the Authority.

27. CONSULTANT ELIGIBILITY FOR AWARD OF AGREEMENTS - DETERMINATION BY AN AGENCY OF THE STATE OF NEW YORK OR NEW JERSEY CONCERNING ELIGIBILITY TO RECEIVE PUBLIC AGREEMENTS

Consultants are advised that the Authority has adopted a policy to the effect that in awarding its agreements it will honor any determination by an agency of the State of New York or New Jersey that a Consultant is not eligible to propose on or be awarded public agreements because

the Consultant has been determined to have engaged in illegal or dishonest conduct or to have violated prevailing rate of wage legislation.

The policy permits a Consultant whose ineligibility has been so determined by an agency of the State of New York or New Jersey to submit a proposal on an Authority agreement and then to establish that it is eligible to be awarded an agreement on which it has proposed because (i) the state agency determination relied upon does not apply to the Consultant, or (ii) the state agency determination relied upon was made without affording the Consultant the notice and hearing to which the Consultant was entitled by the requirements of due process of law, or (iii) the state agency determination was clearly erroneous or (iv) the state agency 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.

28. NO GIFTS, GRATUITIES, OFFERS OF EMPLOYMENT, ETC.

During the term of this Agreement, the Consultant shall not offer, give or agree to give anything of value either to an Authority employee, agent, job shopper, Consultant, construction manager or other person or firm representing the 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 Authority of duties involving transactions with the Consultant on behalf of the Authority, whether or not such duties are related to this Agreement or any other Authority agreement or matter. Any such conduct shall be deemed a material breach of this Agreement.

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 Agreement or any other Authority agreement), etc. which might tend to obligate the Authority employee to the Consultant, 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 Agreement or any other Authority agreement. Where used herein, the term "Port Authority" or "Authority" shall be deemed to include all subsidiaries of the Authority.

The Consultant 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 agreement, the Consultant shall not make an offer of employment or use confidential information in a manner proscribed by the version of the Code of Ethics and Financial Disclosure effective on the commencement date of this Agreement (a copy of which is available upon request to the Office of the Secretary of the Authority). Without the express written approval of the Chief Engineer, you shall keep confidential, and shall require your employees, your subconsultants, and your subconsultant's employees to keep confidential a) all information disclosed by the Authority or its consultants to you or b) developed by you or

your subconsultants in the performance of services hereunder. Disclosure of any such information shall constitute a material breach of the Agreement.

The Consultant shall include the provisions of this clause in each subagreement entered into under this Agreement.

29. CONFLICT OF INTEREST

During the term of this Agreement, the Consultant shall not participate in any way in the preparation, negotiation or award of any agreement (other than an agreement for its own services to the Authority) to which it is contemplated the Authority may become a party, or participate in any way in the review or resolution of a claim in connection with such an agreement if the Consultant has a substantial financial interest in the Consultant or potential Consultant of the Authority or if the Consultant has an arrangement for future employment or for any other business relationship with said Consultant or potential Consultant, nor shall the Consultant 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 Consultant has reason to believe such an arrangement may be the subject of future discussion, or if the Consultant has any financial interest, substantial or not, in a Consultant or potential Consultant of the Authority, and the Consultant's participation in the preparation, negotiation or award of any agreement with such a Consultant or the review or resolution of a claim in connection with such an agreement is contemplated or if the Consultant has reason to believe that any other situation exists which might be viewed as or give the appearance of a conflict of interest, the Consultant shall immediately inform the Chief Engineer in writing of such situation giving the full details thereof. Unless the Consultant receives the specific written approval of the Chief Engineer, the Consultant shall not take the contemplated action which might be viewed as or give the appearance of a conflict of interest. In the event the Chief Engineer shall determine that the performance by the Consultant of a portion of its services under this Agreement is precluded by the provisions of this numbered paragraph, or a portion of the Consultant's said services is determined by the Chief Engineer to be no longer appropriate because of such preclusion, then the Chief Engineer shall have full authority on behalf of both parties to order that such portion of the Consultant's services not be performed by the Consultant, 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 Consultant's execution of this document shall constitute a representation by the Consultant that at the time of such execution the Consultant 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 Consultant's part. The Consultant 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 agreements which result, directly or indirectly, from the services provided by the Consultant hereunder.

Any entity performing services for the Port Authority is presumed to have a potential conflict of interest if the same entity or an affiliate also provides services to other Port Authority projects or their affiliates responsible for building portions of the Hurricane Sandy Resiliency Work.

However, if Consultant desires to provide services to such a third party and Consultant believes that Consultant can provide a mitigation plan that would address the perceived conflict of interest, Consultant, before agreeing to provide services to such a third party, shall give written notice to the Port Authority and submit such plan for evaluation to the Port Authority. The Port Authority will evaluate the submitted mitigation plan and notify Consultant of whether such plan is acceptable in the Port Authority's sole discretion. If the Port Authority determines that a potential conflict of interest exists that, in the Port Authority's sole opinion, would make Consultant's providing services to such a third party inappropriate, Consultant hereby agrees not to agree to provide services to such a third-party. This Section is a material component and is of the essence of the Agreement.

30. INTEGRITY MONITOR

The Authority has retained an integrity monitor in connection with the Services ("Integrity Monitor"). The Consultant shall cooperate and cause its subconsultants and the contractors to cooperate fully with the Integrity Monitor and the Port Authority and its Inspector General, including but not limited to providing complete access to all personnel and records related to the performance of this Agreement. Failure to comply with this provision shall be a material breach of this Agreement.

31. As required, the Authority reserves the right to have specific subconsultant(s) added to, or removed from this Agreement.

32. DEFINITIONS

As used in sections 21 to 31 above, 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 if 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 Consultant by whatever titles known.

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

To Consultant:

_____ (Name)

Attention:

Title:

40. If the foregoing meets with your approval, please indicate your acceptance by signing the original and the additional enclosed copy in the lower left-hand corner and returning them to the Authority.

Sincerely,

THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY

Lillian D. Valenti
Director
Procurement Department

Date _____

ACCEPTED:
FIRM NAME

By: _____

Title: _____

Date: _____

