

May 28, 2015

SUBJECT: REQUEST FOR PROPOSALS FOR THE PERFORMANCE OF AN EXPERT PROFESSIONAL MINORITY, WOMEN-OWNED, AND AIRPORT CONCESSIONS/ DISADVANTAGED BUSINESS ENTERPRISES DISPARITY STUDY (RFP #42075)

Dear Sir or Madam:

The Port Authority of New York and New Jersey (the “Authority”) is seeking Proposals in response to this Request for Proposals (“RFP”) for Expert Professional Minority, Women-owned and Airport Concessions/Disadvantaged Business Enterprises Disparity Study Services.

The general scope of services to be performed under this Agreement as set forth in Attachment A to the Authority’s standard agreement (the “Agreement”), included herewith. You should carefully review this Agreement as it is the form of agreement that the Authority intends that you sign in the event of acceptance of your Proposal and forms the basis for the submission of Proposals.

Documents in Section V.A. and V.B. of Attachment A will be available to the selected Consultant.

I. PROPOSER REQUIREMENTS

The Authority will consider only those firms who are able to demonstrate that they meet the following qualification requirement(s):

- A. Satisfactorily completed at least one (1) contract/agreement for performance of services of similar size, type, scope, and complexity as the subject project within the past three (3) years.
- B. The project team shall have as a minimum one attorney with at least five (5) years experience in disparity studies or related area.

A determination that a Proposer meets the foregoing requirement(s) is no assurance that the Proposer will be selected for performance of the subject services. Firms that do not meet this requirement shall not be further considered.

II. PROPOSAL FORMAT REQUIREMENTS

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

- A. To be acceptable, Proposals shall be of no more than thirty (30) pages single-sided or fifteen (15) pages double-sided, using 12 point or greater font size. The page limit pertains only to Letters E, F and G in Section III below. Each resume shall be two-page maximum, single-sided one-page double-sided, using 12 point or greater font size. The Proposal pages shall be numbered and bound, or in a 3-ring binder, with “Your Firm Name,” and “RFP Number 42075” 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 below in Section III.
- C. All proposals must be delivered in sealed envelopes and/or packages. Address the Proposal to: The Port Authority of New York and New Jersey, **Attention: RFP Custodian**, Procurement Department, 4 World Trade Center, 150 Greenwich Street, 21st Floor, New York, NY 10007. Do not address your Proposal to any other name. **Clearly mark the solicitation number on the outermost package.** You are requested to submit one (1) reproducible original and seven (7) copies, along with eight (8) electronic copies (compact disc or flash drive), of your Proposal for review. Notwithstanding retention of the electronic copies, in case of conflict, the reproducible original of the proposal and the written hard copy Agreement, if awarded, shall take precedence over material on the electronic media.
- D. In each submission to the Authority, including any return address label, information on the compact disc and information on the reproducible original and copies of the Proposal, the Proposer shall use its **FULL LEGAL NAME WITHOUT ABBREVIATIONS**. Failure to comply with this requirement may lead to delays in contract award and contract payments, which shall be the responsibility of the Proposer.
- E. Your Proposal should be forwarded in sufficient time so that the Authority receives them **no later than 2:00 p.m. on June 29, 2015.** The outermost cover of your submittal package must be labeled to include the RFP Number and RFP title, as indicated in the "Subject" above as well as your firm's full legal name without abbreviations. The Authority assumes no responsibility for delays caused by any delivery service.
- F. If your Proposal is to be hand-delivered, please note that only individuals with proper identification (e.g. photo identification) will be permitted access to the Authority's offices. Individuals without proper identification will be turned away and their packages not accepted. There is extensive security at the World Trade Center Site. You must present a valid government-issued photo ID to enter 4 WTC. Individuals without packages or carrying small packages, envelopes or boxes that can be conveyed by hand or on a hand truck may enter through the lobby. All packages, envelopes and boxes may be subject to additional security screening. There is no parking available at 4 WTC/150 Greenwich Street, and parking in the surrounding area is extremely limited. Express carrier deliveries by commercial vehicles will only be made via vendors approved by Silverstein Properties, the WTC Property Manager, through the Vehicle Security Center (VSC). Presently, UPS is the only delivery vendor with approved recurring delivery times. UPS makes deliveries to 4 WTC around 9:30 a.m. each day. Please plan your submission accordingly. As additional express carriers may be approved by Silverstein Properties and scheduled for recurring delivery times with the VSC, this information may be updated. Under certain circumstances, a solicitation may allow for a commercial vehicle to be approved to make a delivery in accordance with the VSC procedures. If applicable, the specific solicitation document will include that information. The Port Authority assumes no responsibility for delays, including, but not limited to, delays caused by any delivery services, building access procedures, or security requirements.

III. SUBMISSION REQUIREMENTS

In order for your Proposal to be considered, your Proposal must provide all of the following information in the order listed. Failure to address each question in each Section and subsection shall result in your proposal deemed as non-responsive, and it shall not be considered for this Agreement:

- A. In the front of your Proposal, a copy of Attachment B (Agreement on Terms of Discussion) signed by an officer of your firm.
- B. A completed copy of Attachment C (Company Profile).
- C. Demonstrate your compliance with the prequalification requirements listed in “Proposer Requirements” as noted in Section I above.
- D. Qualifications and Experience of Staff

- 1. Provide a detailed resume for each individual proposed that includes educational background, chronological history of employment and any relevant licenses and/or certifications. The resumes should clearly identify the years of experience in the field related to the tasks for which the individual will be responsible. Identify subcontractor, if any, and indicate their experience and qualifications.
- 2. Identify the role(s) and responsibilities of each individual proposed as they relate to the performance of projects included in Paragraph E (Firm Qualifications and Experience).

- E. Firm Qualifications and Experience

Provide your firm’s qualifications and experience in performance of the services similar to those contemplated herein. Identify comparable services your firm has performed during the last three (3) years, owners, contact information (for verification purposes), and indicate whether said projects were completed on schedule and within budget. For each project identified, indicate:

- 1. Description of services;
- 2. Start and end dates of services performed;
- 3. Contract value (total value of services performed by you);
- 4. Hiring entity;
- 5. Hiring entity contact person (name, title, phone number, email address).

- F. Submit a detailed description of the proposed management approach to be taken for the administration of the performance of the required services, listed in Attachment A, entitled “Scope of Services”. In support, the Proposer shall also provide:

- 1. A detailed Organization Chart.
- 2. 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.).
- 3. Procedures for keeping the Authority informed of issues and progress during performance of the project.

4. Approach to Quality Control/Quality Assurance.

- G. A detailed description of the proposed technical approach to be taken for the performance of the required services for each task in Attachment A, and a schedule for completion of said tasks. Factors addressed in your technical approach shall include, but are not limited to, your proposed methodology and strategy for performing the services in Attachment A as well as any specific software or other technology you may employ in the performance of these services.

As part of your technical approach, prepare a staffing analysis for performance of each task in Attachment A, using the Excel spreadsheet available at the following link: [Attachment D \(Staffing Analysis Sheet\)](#). Include names and titles of the individuals proposed to perform each of the tasks identified as well as the number of hours required to complete each task.

If proposing the use of subconsultant(s), provide the terms and conditions for their compensation (including their multiplier, and/or billing rates as appropriate) and their Minority/Women-owned Business Enterprise (M/WBE) status.

- H. A complete list of your firm's affiliates.
- I. If the Proposer or any employee, agent or subconsultant of the Proposer may have, or may give the appearance of, a possible conflict of interest, the Proposer shall include in its proposal a statement indicating the nature of the conflict. The Authority reserves the right to disqualify the Proposer if, in the Authority's sole discretion, any interest disclosed from any source could create, or give the appearance of, a conflict of interest. The Authority's determination regarding any question(s) of conflict of interest shall be final.
- J. The Proposer is expected to agree with the standard agreement and its terms and conditions. You should therefore neither make any changes in this standard agreement nor restate any of its provisions in your Proposal or supporting material. **However, if the Proposer has any specific exceptions, such exceptions must be set forth in a separate letter included with its response to this RFP.** The Authority is under no obligation to entertain or accept any such specific exceptions. Exceptions raised at a time subsequent to proposal submission will not be accepted. The scope of the tasks to be performed by the Proposer are set forth in Attachment A to the Authority's standard agreement.

IV. SELECTION PROCESS

The qualifications-based selection shall take into consideration the following technical criteria listed in order of importance, and subsequently cost, as appropriate. After consideration of these factors, the Authority may enter into negotiations with the firm(s) deemed best qualified, in terms of the forgoing technical criteria, to perform the required services:

- A. qualifications and experience of the proposed staff;
- B. qualifications and experience of the firm, including the quality of similar services provided to others, and the demonstrated ability to complete the services in accordance with the project schedule;
- C. management approach for the performance of the contemplated services; and

D. technical approach for the performance of the contemplated services.

V. 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 thirty (30) minutes and should include the material contained in their Proposal. The presentation will be followed by an approximately thirty (30) minute long 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 two (2) staff members who are proposed to work on this project. Notification of presentation scheduling will be made by email. 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 person is unavailable.

VI. ADDITIONAL INFORMATION

Proposers are advised that additional vendor information, including, but not limited to forms, documents and other related information, may be found on the Authority website at www.panynj.gov. Proposers are responsible for periodically checking the Authority website at <http://www.panynj.gov/business-opportunities/bid-proposal-advertisements.html> for RFP updates and addenda.

If your firm is selected for performance of the subject services, the agreement you will be asked to sign, at that time, 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 his 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".

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

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

Following selection of a Consultant, the Authority will forward two copies of the Agreement and Attachment A to the selected firm, which must sign and return both copies. The return of one copy executed by the Authority will effectuate the Agreement.

Should you have any questions, please contact Susie Tom, Solicitation Manager, by email at stom@panynj.gov. All such correspondence must have your name, title, company, mailing address, telephone number and state “**RFP Number 42075**” in the subject line. The authority must receive all questions no later than 2:00 P.M., seven (7) calendar days before the RFP due date. Neither Ms. Tom 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 their requirements. If interpretation or additional information is required, it will be communicated by written addendum issued by the undersigned, and such writing shall form a part of this RFP, or the accompanying documents, as appropriate.

Proposal preparation costs are not reimbursable by the Authority. The Authority shall have no obligation to a firm except under a duly authorized agreement executed by the Authority.

No rights accrue to any Proposer except under a duly authorized agreement for performance of the specified services.

The Authority reserves the 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 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.

Sincerely,

David Gutiérrez, CPPO
Manager, Construction Procurements
Procurement Department

Attachments

ATTACHMENT A

PERFORMANCE OF AN EXPERT PROFESSIONAL MINORITY, WOMEN-OWNED, AND AIRPORT CONCESSIONS/DISADVANTAGED BUSINESS ENTERPRISES DISPARITY STUDY

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 (EWR), John F. Kennedy International (JFK), Teterboro (TEB), LaGuardia (LGA), Atlantic City International (ACY), and Stewart International (SWF) Airports); marine terminals in both New Jersey and New York (Ports Newark and Elizabeth, Howland Hook and Brooklyn Piers); and its interstate tunnels and bridges (the Lincoln and Holland Tunnels; the George Washington, Bayonne, and Goethals Bridges; and the Outerbridge Crossing), which are vital “Gateways to the Nation.”

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

The Authority recognizes the importance of developing Minority and Women-owned Business Enterprises (MWBES), and Airport Concessions/Disadvantaged Business Enterprises (AC/DBEs) as a means of encouraging regional economic development, creating jobs, and maintaining a competitive business environment. The Authority has a longstanding policy of assisting businesses and promoting workforce diversity in its business activities. Disparity studies assist the Authority in establishing programs to increase contract opportunities for these businesses.

In 1993, the Authority conducted a disparity study entitled, *A Study of Disparity & Utilization of Minority (MBE) and Women-owned Businesses (WBEs) for The Port Authority of New York & New Jersey*. The 1993 study primarily focused on the agency’s procurement of construction and goods and services. The findings were that there was an underutilization

of MBE and WBE firms by the Authority, and resulted in the stipulation of compliance requirements in Authority contracts.

A second study was completed in 2004. The third study, completed in 2013, covered two reports – one for MWBEs and the other for DBEs including AC/DBEs. In both studies, the conclusion was that a disparity of MWDBE participation in contracts awarded for construction, and goods and services still existed. The Authority now seeks to conduct a new disparity study to assess MWBE and AC/DBE participation in contracts awarded during 2010 through 2014.

For the purposes of such a study, MBEs, WBEs and DBEs are defined as:

- A. MBE - at least 51 percent owned by, or, in the case of a publicly owned business, at least 51 percent of the stock must be owned by citizens or permanent resident aliens, and the management and daily business operations must be controlled by one or more of such individuals who meet the following ethnic definitions: Black, Hispanic, Asian-Pacific, Asian-Indian or Native American.
- B. WBE - at least 51 percent owned by citizens or permanent resident aliens who are women and whose management and daily business operations are controlled by women. In the case of a publicly owned business, the requirement is that at least 51 percent of the stock be women-owned.
- C. AC/DBE - at least 51 percent owned and controlled by one or more socially and economically disadvantaged individuals, or, in the case of a publicly owned business, at least 51 percent of the stock is owned by one or more socially and economically disadvantaged individuals; and whose management and daily business operations are controlled by one or more of such individuals. Socially and economically disadvantaged individuals are citizens or lawful, permanent residents of the United States who are ethnically defined as Black, Hispanic, Portuguese, Spanish, Asian- Pacific, Asian-Indian, Native American or who are women-- regardless of race or ethnicity -- and members of other groups found to be economically and socially disadvantaged by the U.S. Department of Transportation or by the U.S. Small Business Administration.

II. SCOPE OF WORK

The services of the Consultant shall generally consist of analyzing data related to MWDBE participation in contracts awarded by the Authority for construction, goods and services, and architectural and engineering services from 2010 through 2014, as required to:

- A. determine, if and to what extent, discrimination exists in the market that affects the ability of MWDBE firms to acquire Authority contracts;
- B. determine, whether and to what extent, a disparity exists between the use of MWDBE vendors/contractors and their availability for Authority contracts;
- C. determine, if and to what extent, discrimination exists in the market of AC/DBEs;
- D. make recommendations that further develop and/or refine the Authority's MWDBE and race/gender neutral program activities in an efficient and equitable manner, in accordance with the findings of the study; and
- E. provide findings and recommendations that may be used in the event of litigation.

III. DESCRIPTION OF THE CONSULTANT'S TASKS

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

TASK A. DATA COLLECTION/REVIEW

1. Review the referenced documents included herewith and made a part hereof.
2. Provide an up-to-date legal review of related case law (such as the *City of Richmond v. J.A. Croson Co.*) that will set the precedent for the methodology employed in the disparity study.
3. Compile and review data related to the distribution of public resources towards minority and women-owned business enterprise needs, including race-specific statutes, ordinances, resolutions, historical information pertaining to trade union activity and the activities of contractor and other trade groups for the relevant market area.
4. Review and analyze past and present Authority contracting and procurement practices based on an examination of the referenced documents, and the collection and analysis of availability/utilization statistics for qualified contractors, subcontractors and vendors as compiled by the Consultant.
5. Collect anecdotal evidence of discriminatory practices, if any, within the business classifications provided by the Authority. In addition to other methodologies, conduct one-on-one interviews with a representative sample of MWDBE firms to gather anecdotal evidence of discriminatory practices, if any, in the appropriate business classifications. The exact number of interviews will be jointly determined and agreed upon by the Authority and the Consultant.
6. Submit draft written reports documenting your findings in performance of this task, and discuss with Authority staff, as required. After review by the Authority, incorporate Authority comments as directed, and resubmit as part of the Final Draft Reports required under Task F, below.

TASK B. MEETINGS

Meet with Authority staff and others as required in the performance of the services listed hereunder.

1. Attend and prepare minutes for project review and coordination meetings as required. The Authority anticipates five (5) meetings, including a kick-off meeting and an executive summary presentation.
2. Schedule and attend a kick-off meeting with Authority staff and others as required to assure complete understanding of the goals, schedules, and objectives.
3. Prepare and submit agendas for all meetings to the Authority five (5) workdays prior to the meetings.
4. Submit draft Minutes to the Authority of all meetings attended within three (3) business days after the meeting. Minutes shall identify items requiring follow-up action. Incorporate Authority comments as directed and resubmit as Final within ten (10) business days of receipt of such comments. Implement such follow-up(s) as appropriate. As part of final meeting Minutes, submit a record of follow-up items and actions taken, as appropriate.

5. Project review and coordination meetings shall be held at the Authority's offices or via phone call or web conference, as determined by the Project Manager.

TASK C. REVIEW AND EVALUATE MWDBE UTILIZATION

1. Review and analyze past and present Authority contracting and procurement practices based upon the data reviewed in the prior Task A; interview procurement staff as required; and collect and analyze availability/utilization statistics for qualified contractors, subcontractors and vendors.
2. Analyze the referenced data with regard to participation by MWDBEs in Authority contracting and procurement programs by race, ethnicity and gender, and assess the efficacy of programs in remedying any identified disparities. This analysis shall include identification of any "barriers" to MWDBE participation.
3. Assess the impact of the Authority's programs, both race/sex conscious and race/sex neutral, on MWDBEs and the impact should they be discontinued. The report shall include a compilation of race/sex neutral programs in the Authority's relevant market.
4. Review the possibility of the Authority being considered a "passive participant" in discrimination in the private sector, including a profile of those socioeconomic factors that may impact MWDBE development. This shall include a review of the historical records of discriminatory practices in the construction industry and other procurement categories in the Authority's market region, and an analysis of relevant legislation, including any legislative findings that may have impacted the development of MWDBEs.
5. Investigate the impact of local, state, and federal laws that prohibit discrimination in contracting, and coordinate this with an analysis of private sector hiring practices as a factor that could exacerbate unequal contracting for MWDBEs.
6. Submit and present a draft written report documenting your findings and recommendations, including a detailed description of the methodology used to examine MWDBE utilization in Authority contracting, and MWDBE utilization in the private sector. After review by the Authority, incorporate Authority comments as directed, and resubmit the report as part of the Final Report required under Task F, below.

TASK D. STATISTICAL ANALYSIS

Prepare and submit statistical analyses of the geographic relevant market area, as defined by the Authority, comprised of vendors/contractors who have their principal places of business in the New York/New Jersey region, as well as the contracting and subcontracting practices of private businesses that do business with the Authority. After review by the Authority, incorporate Authority comments as directed, and resubmit the report as part of the Final Report required under Task F, below.

TASK E. RECOMMENDATIONS

Based upon the work performed in the forgoing tasks, prepare draft reports for each of the following items:

1. Recommend and justify policies and programs that remedy any identified disparities in utilization with respect to specific groups that meet the legal applicable requirements. Provide any alternative considered but not recommended, and why.

2. Recommend and justify race and gender-neutral programs that minimize barriers to MWDBE participation in the Authority's procurement practices. Provide any alternative considered but not recommended, and why.
3. Evaluate the feasibility of the Authority placing greater reliance on state, federal, private sector or local government initiatives in the areas of: bonding assistance, small business management, technical and financial assistance. Present and submit a draft written report documenting and justifying findings and recommendations in the performance of services hereunder. Provide any alternative considered but not recommended, and why.

After review by the Authority, incorporate Authority comments as directed, and resubmit the reports as part of the Final Report required under Task F, below.

TASK F. DRAFT REPORTS AND FINAL STUDY

Prepare and present draft reports documenting the Consultant's services hereunder.

The draft reports shall identify and provide an analysis of MWBE and AC/DBE utilization in Authority contracting programs, and shall recommend policies and programs to remedy any disparities identified. The information shall also be summarized in charts and/or tables that can be easily used, and understood, in a visual presentation.

The draft reports will be considered final when the Authority determines they are ready to be published as the Disparity Study.

TASK G. ADDITIONAL AS-NEEDED SERVICES

The Consultant shall be available to:

- perform additional task order services hereunder as required for a period of one (1) year after approval by the Authority of the final Disparity Study required under Task F, above.
- provide expert testimony in connection with all litigation arising from any and all claims arising or alleged to arise from the services performed hereunder. This obligation will remain in effect until each such litigation is resolved through final judgment or settlement, including any associated appeals.

IV. DELIVERABLES

The Disparity Study shall have the following milestone submissions:

1. Preliminary Outline – The Consultant shall submit a preliminary outline of the Disparity Study for review and approval no later than thirty (30) calendar days after the Office of Business Diversity and Civil Rights' authorization to proceed with the subject study.
2. Monthly Progress Reports – No later than the 15th of every month, the Consultant shall provide a monthly progress report to the Office of Business Diversity and Civil Rights which includes, but is not limited to the specific activities:
 - a. performed or completed during the monthly reporting period;
 - b. completed to date and the completion dates of such activities; and
 - c. remaining to be completed and projected completion dates(s).

3. Mid-Term Report – By no later than the midpoint of the Disparity Study Timeline, as submitted in the Consultant’s Proposal and agreed upon in the Consultant’s Preliminary Outline, the Consultant shall submit a detailed Mid-term Progress Report.
4. Draft MWBE and AC/DBE Reports – Submission of the draft reports for review are due at least sixty (60) days prior to the due date of the Disparity Study.
5. Final Submission – Upon submission of the final reports, which comprise the study, and approval given by the Authority, the Consultant shall prepare and present an executive summary presentation including findings, projections and recommendations. In addition, the Consultant shall provide six (6) printed copies and two (2) digital copies of the study. All services of the Consultant shall be concluded within 18 months after authorization by the Authority to proceed with performance of the services contemplated herein.

V. INFORMATION AND MATERIALS PROVIDED BY THE AUTHORITY

The Authority will make available for the Consultant's information certain documents specified below. In regards to the document listed under “A” below, the Authority makes no representation or guarantee as to, and shall not be responsible for its accuracy, completeness or pertinence, and, in addition, shall not be responsible for the conclusions to be drawn therefrom. The provision of this document is to make available such information as is in the possession of the Authority, whether or not such information may be accurate, complete or pertinent, or of any value to the Consultant.

The documents specified under A and B form a part of this Agreement and will be made available to the selected Consultant:

A. Prior Studies:

1. *Port Authority of New York and New Jersey Disparity Study Final Report - 2004*
2. *Disparity Study for The Port Authority of New York and New Jersey – MWBE Final Report – 2013 and DBE/ACDBE Final Report - 2013*

B. Other Documents:

1. The list of pre-qualified Architecture & Engineering firms between 2009-2013 in Excel format.
2. The list of firms (in Excel format) that were awarded contracts with the Authority from 2010 to 2014 in the following categories:
 - a) Prime Construction with the following fields: (Race/Ethnicity/Gender of Business Owner) Available Firms, Bid Attempts, Contracts Won and Contract Dollars.
 - b) Architecture & Engineering Services with the following fields: Primary Firm Name, Committed Amount by State, Certification Status, MWDBE Sub-consultant name.
 - c) Goods and Services including:
 - *Operational Services* with the following fields: (By Race/Ethnicity/Gender of Business Owner) Available Firms, Bid Attempts, Contracts Won and Contract Dollars.

- *Equipment & Supply* with the following fields: (By Race/Ethnicity/Gender of Business Owner) Available Firms, Bid Attempts, Contracts Won and Contract Dollars.
3. MWDBE Construction Subcontractor Payment Information from 2010 to 2014 in Excel format with the following fields: Subcontractor Firm Name, Certification Status, Contract Number & Payment Amount.
 4. Census Data may also be used to estimate availability. The Census Bureau tracks MWDBE firms every five years in their Survey of Minority-Owned Business Enterprises (SMOBE) and their Survey of Women-Owned Business Enterprises (SWOBE). In addition, the Census Bureau publishes Characteristics of Business Owners that tracks many trends such as minority and women employment.
 5. The Authority's list of registered vendors encompasses all vendors who have registered with the Authority in various commodity and service categories. The data is maintained by the Authority and provides an accessible source of information regarding the number and types of vendors available for the Authority's procurement opportunities. The firm availability data (vendor list) will identify firms that have expressed an interest ("ready, willing and able") in providing services or commodities to the Authority.
 6. The Authority's list of certified MWDBEs encompasses all vendors that are certified with the Authority including ACDBEs. Other data pertaining to ACDBEs will be made available.

All documents will be made available to the Consultant from the Project Manager at the Authority offices, during regular business hours.

VI. CONDITIONS AND PRECAUTIONS

A. General

Immediately inform the Authority of any unsafe condition discovered at any time during the course of this work. Vehicular traffic at the Authority's facilities shall always have priority over any and all of the Consultant's operations.

B. Work Areas

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

C. Work Hours

When required, perform work at the site between the hours of 8:00 A.M. and 4:00 P.M., Monday through Friday, 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 York or the State of New Jersey.

VII. 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 and Independent Contractors' coverages in limits of not less than \$2,000,000 combined single limit per occurrence for Bodily Injury Liability and Property Damage Liability. And if vehicles are to be used to carry out the performance of this Agreement, 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 \$2,000,000 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 as approved in advance, and in writing by the Project Manager. If at any time, the Consultant is directed to perform services airside in absence of an approved escort, the Commercial General Liability Insurance and Automobile Liability Insurance provided by the Consultant must contain limits of not less than \$25,000,000 combined single limit per occurrence, as provided in item 2) (a) below. In addition, the liability policies (other than Professional Liability) shall include the "Port Authority of New York and New Jersey and its related entities as additional insured and shall contain an endorsement that the 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 separation of insured condition (cross-liability) and severability of interests provisions so that coverage will respond as if separate policies were in force for each insured.

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 Director 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. Coverage for work within 50 feet of railroad.

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. A waiver of subrogation in favor of the Authority and its related entities, as allowed by law, shall be included.
2. Additional Coverages: The Consultant shall have the policy endorsed when required by the Director 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:

Not less than \$2 million each occurrence, covering acts, errors, mistakes, and omissions arising out of the work or services performed by Consultant, or any person employed by Consultant. All endorsements and exclusions shall be evidenced on the certificate of insurance. The coverage shall be written on an occurrence basis or may be written on a claims made basis with a minimum of a three-year reporting/discovery period.

D. Compliance:

Prior to commencement of work at the site, the Consultant shall deliver a certificate from its insurer evidencing policies of the above insurance stating the title of this Agreement, the P. A. Agreement number and containing a separate express statement of compliance with each of the requirements above set forth, via e-mail, to the Project Manager.

1. Renewal certificates of insurance or policies shall be delivered to the Facility Contract Administrator, Port Authority at least fifteen (15) days prior to the expiration date of each expiring policy. The General Manager, Risk Management must approve the renewal certificate(s) of insurance before work can resume on the facility. If at any time any of the certificates or policies shall become unsatisfactory to the Port Authority, the Consultant shall promptly obtain a new and satisfactory certificate and policy.
2. If at any time the above liability insurance should be canceled, terminated, or modified so that the insurance is not in effect as above required, then, if the Project 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 Project Manager to order suspension), then the Authority may, at its option, obtain insurance affording coverage equal to the above required, the cost of such insurance to be payable by the Consultant to the Authority.

3. Upon request of the General Manager, Risk Management/Treasury, the Consultant shall furnish to the Authority a certified copy of each policy itself, including the provisions establishing premiums.
4. The requirements for insurance procured by the Consultant shall not in any way be construed as a limitation on the nature or extent of the contractual obligations assumed by the Consultant under this Agreement. The insurance requirements are not a representation by the Authority as to the adequacy of the insurance to protect the Consultant against the obligations imposed on them by law or by this or any other Agreement.
5. The Authority may at any time during the term of this Agreement change or modify the limits and coverages of insurance. Should the modification or change result in an additional premium, the General Manager, Risk Management for the Authority may consider such cost as an out-of-pocket expense.

* * *

P.A. Agreement #OBD-15-***

DATE

FIRM

ADDRESS

CITY, ST ZIP

Attention: CONTACT, TITLE

**SUBJECT: PERFORMANCE OF AN EXPERT PROFESSIONAL MINORITY,
WOMEN-OWNED, AND AIRPORT CONCESSIONS/DISADVANTAGED
BUSINESS ENTERPRISES DISPARITY STUDY**

Dear CONTACT:

1. The Port Authority of New York and New Jersey (the "Authority") hereby offers to retain FIRM ("the Consultant" or "you") to provide expert professional services as more fully set forth in Attachment A, which is attached hereto and made a part hereof during 2015 through 2016. The Authority reserves the right, at its sole discretion, to extend this Agreement term for one additional year period (2017). A letter extending the Agreement term shall be sent to the Consultant at least 30 days prior to the end of the term signed by the Director.

The Authority does not guarantee the ordering of any services under this Agreement and specifically reserves the right, in its sole discretion, to use any person or firm to perform the type of services required hereunder.

This Agreement shall be signed by you and the Authority's Chief Procurement Officer. As used herein and hereafter, the "Director" means the Authority's Director, Office of Business Diversity and Civil Rights, acting either personally or through her duly authorized representatives acting within the scope of the particular authority vested in her unless specifically stated to mean acting personally.

For the purpose of administering this Agreement, the Director has designated ***, TITLE, to act as her duly authorized representative. The Project Manager for this project is *****, at (***) ***_****, or e-mail address.

2. Your services shall be performed as expeditiously as possible and at the time or times required by the Director. Time is of the essence in the performance of all your services under this Agreement.

3. In response to a request for specific services hereunder and prior to the performance of any such services, you shall submit in writing to the Director for approval an estimated cost and staffing analysis of such services to the Authority. You shall obtain the Director's written approval of such submittals prior to performing services under this Agreement. After the point at

which your expenditures for such services reach such approved estimated cost, you shall not continue to render any such services unless you are specifically authorized in writing to so continue by the Director and you shall submit to him for approval a revised written estimated cost of such services. If no such authorization is issued, the performance of the specifically requested services under 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 an amount equal to the approved estimated cost. Preparation of the cost estimate and staffing analysis mentioned in the first sentence of this paragraph shall not be a compensable service hereunder.

4. 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 Director personally, in which case the requirements of said notification shall apply.

5. The Consultant shall meet and consult with Authority staff as requested by the Director in connection with the services to be performed herein. All items to be submitted or prepared by the Consultant hereunder shall be subject to the review of the Director. The Director may disapprove if, in his sole opinion said items are not in accordance with the requirements of this Agreement or professional standards or are impractical, uneconomical, or unsuited in any way for the purpose for which they are 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 Director, but the Consultant shall not be compensated under any provision of this Agreement for performance of such revisions. No approval or disapproval or omission to approve or disapprove, however, shall relieve the Consultant of his responsibility under this Agreement to furnish the requested services in accordance with an agreed upon schedule and in accordance with professional standards.

6. You shall not continue to render services under this Agreement after the point at which the total amount to be paid to you including reimbursable expenses reaches the amount of ***, unless you are specifically authorized in writing to so continue by the Director. If no such authorization is issued, 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 above amount as a minimum compensation.

Except for Task G. in the Attachment A, which are as-needed services and will be calculated based on the terms of paragraph 7 below, payments will be made in the following lump sum amounts upon completion of the specified tasks:

- A. Preliminary Outline – Upon submission of the Preliminary Outline and approval by the Authority, the Consultant may submit an invoice for payment equivalent to ten percent (10%) of the Agreement price.
- B. Mid-Term Report – Upon submission of the Mid-Term Report and approval by the Authority, the Consultant may submit an invoice for payment equivalent to twenty percent (20%) of the Agreement price.
- C. Draft MWBE and AC/DBE Reports – Upon final submission of the draft reports and approval by the Authority, the Consultant may submit an invoice for payment equivalent to thirty percent (30%) of the Agreement price.
- D. Final Submission of the Disparity Study – All services of the Consultant shall be concluded within 18 months after authorization by the Authority to proceed with performance of the services contemplated herein. Upon submission of the final reports, which comprise the study and approval given by the Authority, the Consultant shall prepare and present an executive summary presentation including findings, projections and recommendations. In addition, the Consultant shall provide six (6) printed copies and two (2) electronic copies of the Study. The Consultant may then submit an invoice for the balance of the Agreement price, equivalent to forty percent (40%).

7. Compensation for performance of services under Task G of Attachment A will be considered after approval by the Authority of the final Disparity Study required under Task F of Attachment A. Subject to the terms and conditions below, travel time is not reimbursable under subparagraphs A, B, and C hereunder.

A. An amount equal to the actual hourly billing rate billed by you for professional and technical personnel times the total number of hours actually spent by said personnel in the performance of services hereunder. No hour of services by an employee shall be compensable hereunder unless the employee is actually paid for such services by you at his usual salary rate. The hourly billing rate for each employee is the amount to be paid to you and is full compensation for all benefits, taxes, etc., paid by you. There shall be no change in the billing rates during the first year of the term of this Agreement and no additional compensation for overtime, weekend, or holiday work. Attached hereto is a schedule of names, titles and corresponding hourly billing rates. (Clearly indicate if any of the employees, proposed by you to perform the requested services are former Authority employees.) Said schedule shall be the basis for determining compensation, subject to audit and shall be updated by you in writing as required until your services under this Agreement are completed. The Authority reserves the right of approval of all personnel and billing rates for said personnel performing services under this Agreement. For compensation purposes under this Agreement, no such salary or amount shall exceed the salary or amount received by said personnel or rate customarily billed for a partner or principal as of the effective date of this Agreement unless the Director has been notified in advance, in writing, of the increased salary, rate or amount and approves the increase.

The Consultant shall verify that its employees, or subconsultants, working under this Agreement are legally present and authorized to work in the United States, as per the federally required I-9 Program. Furthermore, upon request of the Authority, the Consultant shall furnish, or provide access to the Authority, federal Form I-9 (Employment Eligibility Verification) for each

individual hired by the Consultant, performing services hereunder. This includes citizens and noncitizens.

The Authority reserves the right of approval of all personnel, amounts, billing rates and salaries of said personnel performing services under this Agreement. When requesting salary or billing rate adjustments for one or more of its personnel, the Consultant shall submit his/her name, title, current direct hourly rate or billing rate, proposed new direct hourly salary 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 Authority to grant an increase only if the Consultant demonstrates compliance with all of the following conditions: that increases in salary, or partner's or principal's billing rate or amount are a) in accordance with the program of periodic merit and cost of living increases normally administered by it, b) are warranted by increased costs of providing services under this Agreement, c) are based upon increases in salaries and billing rates which are generally applicable to all of Consultant's clients and d) are in accordance with the Authority's salary rate increase policy for the current year for Authority employees possessing comparable skills and experience. If during any calendar year, Authority limits are not available to the 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 will therefore in all cases be finally determined by the Director or his designee, in his/her sole and absolute discretion.

B. An amount equal to the premium payments for overtime work or night work or for performing hazardous duty, actually paid to partners, principals, project/program management or other professional and technical employees for time actually spent by them in the performance of services hereunder when such overtime or other premium payments have been demonstrated to be in accordance with the Consultant's normal business practice and have been authorized in advance by the Director in writing. The Project Manager for the Authority shall have the right to authorize and approve premium payments up to a total amount of one thousand dollars (\$1,000) per occasion. Payments above said total amount shall be subject to the prior written authorization of the Director. Such premium payments to supervisory employees, who do not receive such payments in the Consultant's normal business practice, shall not be given under this Agreement.

C. Amounts actually paid to subconsultants hereunder who have been retained after the written approval by the Director of the subconsultant and compensation to be paid the subconsultant. The Consultant shall submit a copy of the terms and conditions of the subconsultant's compensation (including multiplier, if applicable), as well as an estimate of the number of hours required by the subconsultant to perform his services, as part of any request for approval of the subconsultant.

D. Out-of-pocket expenses, approved in advance by the Director, 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.

Notwithstanding the above, the Authority will pay an amount approved in advance by the Director and computed as follows for the reproduction of submittal drawings, specifications and reports:

1) 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

2) 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.

The Authority will not pay for expenses that do not include amounts 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 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 FAX, Telex, and telegrams, or expendable office supplies. Unless otherwise indicated, required insurance is not a reimbursable expense.

When the Consultant uses its personal vehicle to provide services within the Port District, the Consultant shall 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 United States General Services Administration (GSA) - <http://www.gsa.gov/portal/content/100715>) per mile traveled by auto.

When the Consultant is asked to provide services outside the Port District, the actual cost of transportation as well as the cost for hotel accommodations and meals will be reimbursable hereunder when approved in advance in writing by the Director. The cost for all meals and lodging on approved overnight trips are limited to the amounts established by the United States GSA for that locality.

GSA: Domestic Rates: <http://www.gsa.gov/portal/category/21287>

You shall obtain the Director's written approval prior to making expenditures for out-of-pocket expenses in excess of one-thousand dollars (\$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 twenty-five dollars (\$25) with receipted bills and provide said receipts with the appropriate billing.

E. 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 means 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 rates referred to in subparagraph A above.

8. 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 constitute 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.

9. On or about the fifteenth (15th) day of each month, you shall render a bill 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 Director. Upon receipt of the foregoing, the Director 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 will, within fifteen (15) days after receipt of such certification by the Director, advance to you by check the sum certified minus all prior payments to you for your account.

10. 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 without cause upon three (3) days notice to you. 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 Director through the date of termination, minus all prior payments to you.

11. You shall not issue or permit to be issued any press release, advertisement, or literature of any kind, which refers to the Authority or to the services performed in connection with this

Agreement, unless you first obtain the written approval of the Director. Such approval may be withheld if for any reason the Director believes that the publication of such information would be harmful to the public interest or is in any way undesirable.

12. 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 Director, 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 Director.

13. Any services performed for the benefit of the Authority at any time by you or on your behalf, even though 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.

14. No certificate, payment (final or otherwise), acceptance of any work nor any other act or omission of the Authority or the Director 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.

15. Originals of 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 will have the right to use or permit the use of them and any of 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 to 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, 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.

16. 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 will 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.

17. Notwithstanding anything to the contrary herein, the work product of the Consultant, its officers, agents, employees, or sub-consultants which is produced in accordance with the Agreement, whether it consists of computer programming or documentation thereof, including source code, and on any media whatsoever, shall be deemed to belong exclusively to the Authority, and the Authority will have the exclusive right to obtain and to hold in its own name any and all copyrights, patents, trade secrets or other proprietary rights and protection as may be produced as part of this work product, including the right to extensions or renewals, where appropriate. The work product shall not be destroyed or released to anyone outside of the Office of Business Diversity and Civil Rights without express written authorization of the Director. The Authority will have the exclusive right to use or permit the use of them and any ideas or methods represented by them for any purpose and at any time without other compensation than that specifically provided for herein. You agree to contract with your employees for the benefit of the Authority to insure that the Authority has such rights and to give to the Authority or any party designated by the Authority all assistance reasonably required to perfect the rights herein above stated. You shall indemnify and hold harmless the Authority against any claims of proprietary rights infringement arising out of such use of your work product.

18. You shall promptly and fully inform the Director in writing of any intellectual property 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.

19. You shall promptly and fully inform the Director 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 being based upon your special qualifications for the services herein contemplated, 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 Director. All persons to whom you sublet services, however, shall be deemed to be your agents and no subcontracting 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. The Authority has a long-standing practice of encouraging Minority Business Enterprises (MBEs) and Women Business Enterprises (WBEs) to seek business opportunities with it, either directly or as subconsultants or subcontractors. "Minority-owned business" or "MBE" means a business entity which is at least fifty-one percent (51%) owned by one (1) or more members of one (1) or more minority groups, or, in the case of a publicly held corporation, at least fifty-one percent (51%) of the stock of which is owned by one (1) or more members of one (1) or more minority groups; and whose management and daily business operations are controlled by one (1) or more such individuals who are citizens or permanent resident aliens. "Women-owned business" or "WBE" means a business which is at least fifty-one percent (51%) owned by one (1) or more women; or, in the case of a publicly held corporation, fifty-one percent (51%) of the stock of which is owned by one (1) or more women: and whose management and daily business operations are controlled by one (1) or more women who are citizens or permanent resident aliens.

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

A. Black persons having origins in any of the Black African racial groups not of Hispanic origin;

B. Hispanic persons of Puerto Rican, Mexican, Dominican, Cuban, Central or South American culture or origin, regardless of race;

C. Asian and Pacific Islander persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent or the Pacific Islands;

D. American Indian or Alaskan Native persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification.

The Authority has set a goal of twelve percent (12%) participation by qualified and certified MBEs and five percent (5%) to qualified and certified WBEs on technical service projects.

To be "certified" a firm must be certified by the Authority's Office of Business Diversity and Civil Rights.

In order to facilitate the meeting of this goal, the Consultant's shall use every good faith effort to utilize subconsultants who are certified MBEs or WBEs to the maximum extent feasible.

The Authority has a list of certified MBE/WBE service firms which is available to you at <http://www.panynj.gov/business-opportunities/supplier-diversity.html>. The Consultant will be required to submit to the Authority's Office of Business Diversity and Civil Rights for certification the names of MBE/WBE firms it proposes to use who are not on the list of certified MBE/WBE firms.

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, and to sensitive security sites and facilities (including rental spaces) to any person that declines to abide by Authority security procedures and protocols, and to any person with a criminal record with respect to certain crimes or who may otherwise poses a threat to the construction site or facility security. The Authority 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, and to 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

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

- 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 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 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. can 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 credentials 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 Consultant to immediately report to the Authority the loss of any staff member's or subconsultant's individual facility-specific identification credential. The Consultant will 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 will 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 sites or facilities (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 subconsultants and service suppliers at the Authority construction sites or facilities (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 to 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 sites or facilities 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 Authority information considered Protected Information (“PI”) as defined in the Port Authority Information Security Handbook (“Handbook”), dated October, 2008, corrected as of November 14, 2013; and as may be further amended. The Handbook and its requirements are hereby incorporated into this Agreement and will govern the possession, distribution and use of PI if at any point during the lifecycle of the project or solicitation it becomes necessary for the Consultant to have access to PI. Protecting sensitive information requires the application of uniform safeguarding measures to prevent unauthorized disclosure and to control any authorized disclosure of this information within the 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, PI procedures, protocols and practices, which may include, but which are not necessarily 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.

23. 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 the Consultant 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 his 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 he 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 the Consultant 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 the Consultant would assume or the claims for which he 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.

24. 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 submission, 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.

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

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:

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 the Code of Ethics dated March 11, 2014, or as may be revised (a copy of which is available upon request to the Authority) 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 certifications in this Section and the Section entitled “Certification of No Investigation (Criminal or Civil Anti-trust), Indictment, Conviction, Debarment Suspension, Disqualification and Disclosure of Other Information”, 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 certifications in this Section and the Section entitled “Certification of No Investigation (Criminal or Civil Anti-trust), Indictment, Conviction, Debarment Suspension, Disqualification and Disclosure of Other Information”, 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 certifications in this Section and the Section entitled “Certification of No Investigation (Criminal or Civil Anti-trust), Indictment, Conviction, Debarment Suspension, Disqualification and Disclosure of Other Information”, 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 “25G.”, 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 Chief Procurement Officer 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 certifications in this Section and the Section entitled "Certification of No Investigation (Criminal or Civil Anti-trust), Indictment, Conviction, Debarment Suspension, Disqualification and Disclosure of Other Information" at the time the proposal is submitted, the Consultant shall immediately notify the Authority in writing during the period of irrevocability of proposals on this Agreement or any extension of such period, or during the term of this 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 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.

26. 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.

27. CONSULTANT RESPONSIBILITY, SUSPENSION OF WORK AND TERMINATION

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

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

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

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

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

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

In addition, during the term of this Agreement, the Consultant shall not make an offer of employment or use confidential information in a manner proscribed by the Code of Ethics and Financial Disclosure dated March 11, 2014, or as may be revised (a copy of which is available upon request to the Office of the Secretary of the Authority). Without the express written approval of the Director, 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 Authority in writing of such situation giving the full details thereof. Unless the Consultant receives the specific written approval of the Authority, the Consultant shall not take the contemplated action which might be

viewed as or give the appearance of a conflict of interest. The Authority may require the Consultant to submit a mitigation plan addressing and mitigating any disclosed or undisclosed conflict, which is subject to the approval of the Authority and shall become a requirement, as though fully set forth in this Agreement. In the event the Authority 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 Authority to be no longer appropriate because of such preclusion, then the Authority 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. The Authority's determination regarding any questions of conflict of interest shall be final.

30. DEFINITIONS

As used in sections 24 to 29 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 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.

31. The entire Agreement between the parties is contained herein and no change in or modification, termination or discharge of this Agreement in any form whatsoever shall be valid or enforceable unless it is in writing and signed by the party to be charged therewith, or his duly authorized representative, provided, however, that termination in the manner hereinbefore expressly provided shall be effective as so provided.

32. No Commissioner, officer, agent or employee of the Authority shall be charged personally by you with any liability or held liable to you under any term or provision of this Agreement, or because of its execution or attempted execution or because of any breach hereof.

33. References herein to the Port Authority shall and shall be deemed to mean equally the Port Authority Trans Hudson Corporation (PATH).

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

Sincerely,

THE PORT AUTHORITY OF
NEW YORK AND NEW JERSEY

ACCEPTED:
FIRM NAME

Lillian D. Valenti
Chief Procurement Officer

By: _____

Print Name: _____

Date _____

Title: _____

Date: _____

INSTRUCTIONS

If the selected Consultant firm is not located in the States of New York or New Jersey, change the number of the last Paragraph of this Agreement from "34" to "35" and insert a new Paragraph "34" as follows:

34. This Agreement shall be governed by and construed in accordance with the laws of the State of New York without regard to conflict of laws principles.

ATTACHMENT B

**PERFORMANCE OF AN EXPERT PROFESSIONAL MINORITY, WOMEN-OWNED,
AND AIRPORT CONCESSIONS/DISADVANTAGED BUSINESS ENTERPRISES
DISPARITY STUDY (RFP #42075)**

AGREEMENT ON TERMS OF DISCUSSION

The Port Authority's receipt or discussion of any information (including information contained in any proposal, vendor qualification(s), 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.

Any information (including information contained in any proposal, vendor qualification(s), ideas, models, drawings, or other material communicated or exhibited by us or on our behalf) provided in connection with this procurement is subject to the provisions of the Port Authority Freedom of Information Code and Procedure adopted by the Port Authority's Board of Commissioners on October 22, 2014, which may be found on the Port Authority website at: <http://www.panynj.gov/corporate-information/pdf/foi-code.pdf>. The foregoing applies to any information, whether or not given at the invitation of the Authority.

(Company)

(Signature)

(Title)

(Date)

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

ATTACHMENT C

COMPANY PROFILE

**REQUEST FOR PROPOSALS FOR PERFORMANCE OF AN EXPERT
PROFESSIONAL MINORITY, WOMEN-OWNED, AND AIRPORT
CONCESSIONS/DISADVANTAGED BUSINESS ENTERPRISES DISPARITY STUDY
(RFP #42075)**

1. Company Name (print or type):

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

3. Business Telephone Number: _____

4. Business Fax Number: _____

5. Firm website: _____

6. Federal Employer Identification Number (EIN): _____

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

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

9. Officer or Principal of Firm and Title:

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

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

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

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