

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

**REQUEST FOR PREQUALIFICATION INFORMATION**

**ISSUE DATE: 4-29-13**

**TITLE: Natural Gas Services at Selected New York and New Jersey Facilities of  
the Port Authority of New York and New Jersey**

**SOLICITATION NO.: 33240**

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

**PRE-SUBMITTAL CONFERENCE CALL:      MAY 8, 2013      TIME: 10:00 A.M.**

**QUESTIONS DUE:      MAY 10, 2013      TIME: 2:00 P.M.**

**PREQUALIFICATION INFORMATION DUE: MAY 22, 2013      TIME: 2:00 P.M.**

**CONTACT: MR. RICHARD A. GREHL**

**PHONE:      (201) 395-3441**

**EMAIL:      rgrehl@panynj.gov**

## Request for Prequalification Information

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## **PART I - STANDARD INFORMATION FOR BIDDERS**

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

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

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

### **2. General Information: Solicitation Process and Schedule**

#### **a) Procurement Process**

This procurement process will be conducted in two steps for each natural gas Account Group as set forth in Appendix I. Please see Part II, Section 12. Available Documents for instructions on how to request Appendix I.

The two procurement steps shall be as follows:

#### **(1) Statement of Prerequisites – Required For All Prospective Bidders**

All Bidders in this procurement process ("Prospective Bidders") shall submit documentation, which will be evaluated in accordance with Part II of this Request for Prequalification Information. Prospective Bidders whose submissions are

found to be acceptable (“Pre-Qualified Bidders”) will be invited to participate in a “reverse auction” process by means of which the Port Authority will seek to select natural gas provider(s) for certain Port Authority Accounts. Prospective Bidders whose information has not met the specified prerequisites will be deemed ineligible to participate in the reverse auction process and will be so notified.

(2) Online Reverse Energy Auction(s) – For Pre-Qualified Bidders Only

The Port Authority is utilizing an internet-based energy auction platform provided by World Energy Solutions, Incorporated, (hereinafter “WES” or “World Energy”), to obtain pricing for this procurement. Pricing will be requested from Pre-Qualified Bidders through online reverse energy auction(s) conducted by WES. Notification of Contract award will be issued as set forth in Section 8, below. The Port Authority reserves the right to award a Contract for none, some or all of the Account Groups and to award separate Contracts for each of the Account Groups to different Bidders or to award a Contract covering more than one Account Group to a particular Bidder.

b) Procurement Schedule (see cover page for required times)

PROCUREMENT SCHEDULE <sup>1</sup>	
DATE	MILESTONE
April 29, 2013	Solicitation Advertised
May 8, 2013	Prospective Bidder Conference Call
May 10, 2013	Last Day to Submit Bidder Questions
May 17, 2013	Post Questions and Answers
May 22, 2013	Statement of Prerequisites Due
May 29, 2013	Pre-Qualification Notifications Issued
June 5, 2013	Online Reverse Auction(s)

**3. Form and Submission of Statement of Prerequisites (Pre-Qualification)**

All Bidders shall review carefully every provision of this document, provide all the information required, and sign and return one entire original copy with three (3) additional copies to the Port Authority in accordance with the instructions on the Cover Sheet and Part II – Contract Specific Information for Bidders. The Bidder should retain one complete duplicate copy for its own use. The “Signature Sheet” contained in Part IV herein must be completed and signed by the Bidder. The Statement of Prerequisites shall be sealed in an envelope conspicuously marked with the Bidder’s name, address, and Port Authority Vendor Number, if available. In addition, the outside of the package must clearly state the Solicitation Title, the Solicitation Number and the Solicitation Due Date. Failure to properly label submissions may cause a delay in identification, misdirection or disqualification of the submissions. In submitting a response to this solicitation, the Bidder thereby

<sup>1</sup> This schedule may be subject to change. Changes to this solicitation will be posted at <http://www.panynj.gov/business-opportunities/> under the solicitation number listed on the Cover Sheet for this Request for Prequalification Information.

assumes the obligations and liabilities imposed upon it herein and expressly makes the representations and warranties required in this document.

All Statements of Prerequisites must be received on or before the due date and time specified on the Cover Sheet. Submissions are only accepted Monday through Friday, excluding Port Authority holidays, between the hours of 8:00 a.m. and 5:00 p.m., via (1) regular mail, (2) express delivery service (e.g. UPS), or (3) hand delivery. If your submission is to be hand-delivered by messenger, please note that only individuals with valid photo identification will be permitted access to Port Authority offices. Individuals without valid identification shall be turned away and their packages shall not be accepted. Submissions not received by the bid custodian in accordance with the scheduled Statement of Prerequisites submission deadline outlined above shall be considered late.

#### **4. Form and Submission of Bid**

The Port Authority is utilizing an internet-based energy auction platform provided by WES to obtain pricing for this procurement. All prices submitted by a Bidder through the WES transaction platform shall be in accordance with the provisions of this Request for Prequalification Information. Alternate bids (bids on terms or conditions different from those established by this solicitation) are not permitted.

Auction participation will be limited to Pre-Qualified Bidders only. Bidders will be required to register prior to the auction(s) and shall participate in the auction events in accordance with the terms and conditions of this solicitation.

It shall be the express responsibility of the Pre-Qualified Bidder to understand both the rules and the mechanics of the WES auction platform. Upon request, a demonstration reverse auction will be provided to assist Pre-Qualified Bidder(s).

#### **5. Vendor Profile**

It is vitally important that Bidders keep their vendor profiles up to date with an appropriate e-mail address, as this will enable Bidders to receive timely notice of advertisements, reminders, solicitations and Addenda. Bidders may update their vendor profiles or register as Port Authority Vendors by accessing the online registration system at <https://panynjprocure.com/VenLogon.asp>.

#### **6. Acknowledgment of Addenda**

If any Addenda are posted or sent as part of this solicitation, the Bidder shall complete, sign and include the Addenda with its response to this solicitation in the manner set forth in section 3, above. In the event any Bidder fails to conform to these instructions, its response to this solicitation will nevertheless be construed as though the Addenda had been acknowledged.

If the Bidder downloads this solicitation document, it is the responsibility of the Bidder to periodically check the Port Authority website at <http://www.panynj.gov/business-opportunities/bid-proposal-advertisements.html> and download any Addenda that might have been issued in connection with this solicitation.

## **7. Firm Offer**

The Bidder offers to provide the Port Authority specified commodities in connection therewith required under this Contract, all as specified by the terms and conditions of the Contract, based on the prices which shall be submitted through the WES auction platform.

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

## **8. Acceptance or Rejection of Bids**

The acceptance of a bid will be by an electronic notice of award to the selected Bidder(s) by an authorized representative of the Port Authority. This Contract also includes the provision of natural gas to Port Authority Trans-Hudson Corporation (PATH) Accounts. The selected Bidder(s) will receive a notice of award e-mail within two hours of auction close and no later than 3:00 P.M. Eastern Time on the day of the auction(s) and such notice of award shall be considered official and binding. This notice shall include the date of award, the duration of Contract, the Commencement Date, the Expiration Date, a list of the Accounts awarded, and pricing for each Account. A written confirmation of the award, signed by the Port Authority, will be faxed and mailed to the selected Bidder(s) within seven (7) days of award.

No other act of the Port Authority, its Commissioners, officers, agents or employees shall constitute acceptance of a bid. The Port Authority reserves the unqualified right, in its sole and absolute discretion, to reject any or all bids or to accept any bid(s) that in its judgment will best serve the public interest and to waive defects in any bid(s). No rights accrue to any Bidder unless and until its bid is accepted.

## **9. Prospective Bidder's Questions**

Any questions by Prospective Bidders concerning the services to be supplied or the terms and conditions of the Contract may be addressed to the Contract Specialist listed on the Cover Sheet of this document. The Contract Specialist is authorized only to direct the attention of Prospective Bidders to the relevant or applicable portions of the Contract. No employee of the Port Authority is authorized to interpret any portion of the Contract or to give information in addition to that contained in the Contract. When Contract interpretation or additional information as to the Contract requirements is deemed necessary by the Port Authority, it will be communicated to all Bidders by written Addenda and shall be posted on the Port Authority website. Prospective Bidders must submit such questions or concerns no later than the Questions Due Date noted on the Cover Sheet of this Request for Prequalification Information. The Port Authority may answer these questions, and disseminate all answers within a reasonable time period to all Prospective Bidders via Addenda, which shall be considered part of the Contract.

## **10. Additional Information To and From Bidders**

Should the Authority require additional information from the Bidder in connection with its bid, such information shall be submitted within the timeframe specified by the Port Authority.

If the Bidder is a corporation, a partnership, or a joint venture, a statement of the names and residences of its officers, partners, or authorized representatives, as applicable, should be submitted on the "Name and Residence of Principals Sheet," directly following the Signature Sheet in Part IV.

## **11. Assessment of Bid Requirements**

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

## **12. Bidder's Prerequisites**

Only Bidders who can comply with the prerequisites specified below and in Part II hereof at the time of the submission of their bid should submit bids, as only the prequalification statements submitted by such Bidders in compliance with the prerequisites will be considered. By furnishing this Request for Prequalification Information document to the Bidder, the Port Authority has not made a determination that the Bidder has met the prerequisites or has otherwise been deemed qualified to provide the services. A determination that a Bidder has met the prerequisites is no assurance that it will be deemed qualified in connection with other bid requirements included herein.

## **13. Qualification Information**

Prior to participation in a reverse auction, the Port Authority requests the Bidder to furnish the Port Authority with a Statement of Prerequisites. Please refer to Part II – "Specific Bidder's Prerequisites (Statement of Prerequisites)" for instructions. Requested information shall be submitted in accordance with Section 3 of this Part I: "Form and Submission of Statement of Prerequisites (Pre-Qualification)." In addition, the Port Authority may give written or oral notice to the Bidder to furnish the Port Authority with information and to meet with designated representatives of the Port Authority relating to the Bidder's qualifications and ability to fulfill the Contractor's obligations hereunder. Matters upon which the Port Authority may inquire may include, but may not be limited to, the following:

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

1. (i) Certified financial statements, including applicable notes, reflecting the Bidder's assets, liabilities, net worth, revenues, expenses, profit or loss and cash flow for the most recent calendar year or the Bidder's most recent fiscal year.  
  
(ii) Where the certified financial statements set forth in (i) above are not available, then either reviewed or compiled statements from an independent accountant setting forth the aforementioned information shall be provided.  
  
(iii) Where neither certified financial statements nor financial statements from an independent accountant are available, as set forth in (i) and (ii) above, then financial statements containing such information prepared directly by the Bidder may be submitted; such financial statements, however, must be accompanied by a signed copy of the Bidder's most recent Federal income tax return and a statement in writing from the Bidder, signed by an executive officer or their authorized designee, that such statements accurately reflect the current financial condition of the Bidder.

If the statements submitted pursuant to subparagraphs (i), (ii) or (iii) are dated more than forty-five (45) days prior to the Statement of Prerequisites due date, then the Bidder shall submit a statement in writing, signed by an executive officer of the Bidder or its designee, that the present financial condition of the Bidder is at least as good as that shown on the statements submitted.

2. A statement from the Bidder of work on hand, (including any work on which a bid has been submitted), which sets forth a description of the work, the annual dollar value of the work, the location of the work by city and state, the current percentage of completion of the work, the expected date for completion of the work, and the name of an individual most familiar with the Bidder's performance of the work on these jobs.
  3. The name and address of the Bidder's banking institution, the Bidder's chief banking representative handling its account, the Bidder's Federal Employer Identification Number (i.e., the number assigned to firms by the Federal Government for tax purposes), the Bidder's Dun and Bradstreet number, if any, the name of any other credit service to which the Bidder has furnished information, and the number, if any, assigned by such service to the Bidder's account.
- b. Information relating to the Bidder's Statement of Prequalification.
  - c. If the Bidder is a corporation: (1) a copy of its Certificate of Incorporation and, if applicable, all Amendments thereto with a written declaration signed by the Secretary of the Corporation with the corporate seal affixed thereto, stating that the copy furnished is a true copy of the Certificate of Incorporation and any such Amendments as of the date of the opening of the bid and (2) if the Bidder is not incorporated under the laws of the state in which the service is to be performed, a certificate from the Secretary of State of said state evidencing the Bidder's legal qualification to do business in that state.

- d. A statement setting forth the names of those personnel to be in overall charge of the services and those who would be exclusively assigned to supervise the service and their specific roles therein, setting forth as to each the number of years of experience and in which functions and capacities each would serve.
- e. Information to supplement any statement submitted in accordance with the Standard Contract Terms and Conditions entitled "Contractor's Integrity Provisions."
- f. In the event that the Bidder's performance on a current or past Port Authority or Port Authority Trans-Hudson Corporation (PATH) contract or contracts has been rated less than satisfactory, the Manager, Purchasing Services Division, may give oral or written notice to the Bidder to furnish information demonstrating to the satisfaction of such Manager that, notwithstanding such rating, such performance was in fact satisfactory or that the circumstances which gave rise to such unsatisfactory rating have changed or will not apply to performance of this Contract, and that such performance will be satisfactory.
- g. The Bidder recognizes that it may be required to demonstrate to the satisfaction of the Port Authority that it in fact can provide for the services called for in this Contract and that it may be required to substantiate the warranties and representations set forth herein and the statements and assurances it may be required to give.

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

#### **14. Available Documents - General**

Certain documents, listed in Part II hereof, will be made available for reference and examination by Bidders during regular business hours. Arrangements to review these documents done in accordance with instructions in Section 12 of Part II ("Available Documents").

The Port Authority makes no representations or guarantees as to, and shall not be responsible for, their accuracy, completeness or pertinence, and, in addition, shall not be responsible for the inferences or conclusions to be drawn therefrom, except for the purpose of setting the Maximum Monthly Consumption Amount and the Minimum Monthly Consumption Amount, as each is defined in Part V.

#### **15. Pre-Commencement Meeting**

The lowest qualified Bidder(s) may be called for a meeting prior to the commencement of the Contract.

## **16. Good Faith Participation**

The Bidder(s)/Contractor(s) shall use every good-faith effort to provide for meaningful participation by certified Minority Business Enterprises (MBEs) and certified Women-owned Business Enterprises (WBEs) as defined in the Standard Contract Terms and Conditions, in all purchasing, subcontracting and ancillary service opportunities associated with this Contract, including purchase of equipment, supplies and labor services.

Good Faith efforts to include participation by MBEs/WBEs shall include the following:

- a. Dividing the services and materials to be procured into small portions, where feasible.
- b. Giving reasonable advance notice of specific contracting, subcontracting and purchasing opportunities to such MBEs/WBEs as may be appropriate.
- c. Soliciting services and materials, to be procured, from the Directory of MBEs/WBEs, a copy of which can be obtained on the Port Authority Website at <http://www.panynj.gov/business-opportunities/supplier-diversity.html> or by contacting the Port Authority's Office of Business Diversity and Civil Rights (OBD CR) at (212) 435-7819 or seeking MBEs/WBEs from other sources.
- d. Ensuring that provision is made to provide progress payments to MBEs/WBEs on a timely basis.

## **17. Additional Bidder Information**

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

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## PART II - CONTRACT SPECIFIC INFORMATION FOR BIDDERS

The following information may be referred to in other parts hereof, or further detailed in other parts hereof, if applicable.

### 1. **Service(s) Required**

The Contractor will purchase and deliver natural gas to each City-gate as defined in Part V, 1.a, Specific Definitions.

### 2. **Location(s) Services Required**

This Service will be provided to the Facilities and Accounts set forth in Part V - Specifications and Appendix I, thereto.

### 3. **Expected Date of Commencement of Contract**

On or about June 1, 2013

### 4. **Contract Type**

Requirements Contract

### 5. **Duration of Contract**

The length of the initial term of the Contract, excluding any Option Period(s), ("Base Term") will be determined on the day of the auction and stated on the World Energy Solutions, Incorporated, (hereinafter "WES" or "World Energy"), energy auction platform during auction operation. The Port Authority may request Bids for contract lengths varying from 12 to 48 months for each Account Group in Appendix I.

### 6. **Price Adjustment during Base Term (Index Based)**

Not Applicable

### 7. **Option Period(s)**

Two (2) Option periods. Each Option period shall cover one Meter Read Date for all accounts within each Account Group, in each case, upon price agreement for such by the Port Authority and the Contractor.

### 8. **Extension Period**

Not Applicable

### 9. **Pre-submittal Conference Call**

A Bidders Teleconference will be held on May 8, 2013 at 10:00 AM.

This conference call is open to all Prospective Bidders. Conference participation is optional; no advance registration is required. Please call (888) 807-5706 and enter the code: "752358" to participate.

## 10. Specific Bidder's Prerequisites

All Bidders shall be pre-qualified in advance of the internet-based reverse auction process and bid award. Bidder pre-qualification will be granted to Prospective Bidders that submit documentation which demonstrates to the Port Authority, in its sole discretion, that Bidders satisfy the following prerequisites in addition to the information that may be requested pursuant to Part I, Section 13:

- a. The Bidder shall have had at least two (2) years of continuous experience immediately prior to the date of submission of its bid in the supplying of natural gas and management and operation of a business providing natural gas supply service to accounts anywhere in the United States under contracts totaling at least 400,000 Dth (as defined in Part V hereof) and during that time shall have actually engaged in providing said or such services to accounts under contract. The Bidder may fulfill this prerequisite if the Bidder can demonstrate to the satisfaction of the Port Authority that the persons or entities owning and controlling the Bidder have had a cumulative total of at least two (2) year(s) of experience immediately prior to the date of the submission of its bid in the management and operation of a business actually engaged in providing these services to accounts under contract during that time, or have owned and controlled other entities which have actually engaged in providing the above described services during that time period.
- b. During the time period stated in (a) above, the Bidder, or persons or entities owning and controlling the Bidder, shall have performed or is currently performing under at least one (1) contract supplying natural gas as required under this Contract.
- c. In the event a bid is submitted by a joint venture the foregoing prerequisites will be considered with respect to such bid as follows: The prerequisites in subparagraphs (a) and (b) above, will be considered satisfied if the joint venture itself, or any of its participants individually, can meet the requirements. If a joint venture which has not been established as a distinct legal entity submits a bid, it and all participants in the joint venture shall be bound jointly and severally and each such participant in the joint venture shall execute the bid and do each act and thing required by this Invitation for Bid. On the original bid and wherever else the Bidder's name would appear, the name of the joint venture Bidder should appear if the joint venture is a distinct legal entity. If the Bidder is a common law joint venture, the names of all participants shall be listed followed by the words "acting jointly and severally." All joint venture Bidders must provide documentation of their legal status.
- d. The Bidder shall possess and demonstrate all applicable licenses, and shall be in compliance with all applicable state and federal laws, regulations and standards applicable to providers of natural gas supply services as follows:

For Bidders serving New York Natural Gas Accounts:

Bidders serving natural gas accounts in the State of New York must be registered to provide natural gas services with the New York State Public Service Commission (NYPSC) and have agreements in place to allow for transportation of natural gas to Port Authority accounts.

For Bidders serving New Jersey Natural Gas Accounts:

Bidders serving natural gas accounts in the State of New Jersey must be registered to provide natural gas services with the New Jersey Board of Public Utilities (NJBPU) and have agreements in place to allow for transportation of natural gas to Port Authority accounts.

- e. All Bidders must complete and return Part IV of this solicitation.

Proof that the above prerequisites are met should be submitted with the prequalification information.

**11. Bidder's Additional Submittal Requirements**

The Bidder must submit the contact person, company name, account size, and phone number, of at least three (3) references, preferably from the public sector, one of which entity should be similar in scope to the Port Authority, for which the Bidder has provided competitive natural gas supply. The Port Authority reserves the right to verify a Prospective Bidder's experience and references.

**12. Available Documents**

The following will be made available for reference and examination:

Appendix I: The Port Authority of New York and New Jersey 2012 Data Exhibit.  
This document will be made available to Prospective Bidders upon request.

Please call 212.435.5463, Monday through Friday, between the hours of 8:00 a.m. and 5:00 p.m., to request the document listed above.

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

### 1. General Agreement

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

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

### 2. Duration

- a) The initial term of this Contract, excluding any Option Period(s), (hereinafter called the “Base Term”), shall commence on or about the date specified in Part II hereof, on the specific date set forth in the Port Authority’s notice of Contract award (hereinafter called the “Commencement Date”), and unless otherwise terminated, revoked or extended in accordance with the provisions hereof, shall expire as specified in the Port Authority’s notice of Contract award (hereinafter called the “Expiration Date”).
- b) If specified as applicable to this Contract and set forth in Part II hereof, the Port Authority shall have the right to extend this Contract for additional period(s) (hereinafter referred to as the “Option Period(s)”) following the Expiration Date. If the Port Authority shall elect to exercise the Option(s) to extend this Contract, then, no later than thirty (30) days prior to the Expiration Date, the Port Authority shall send a notice that it is extending the Base Term of this Contract, and this Contract shall thereupon be extended for the applicable Option Period. If the Contract provides for more than one Option Period, the same procedure shall apply with regard to extending the term of this Contract for succeeding Option Periods.

### 3. Billing

- a) The Contractor shall be required to prepare and submit to the Port Authority a single monthly billing invoice (“Summary Billing”) for each Account Group covered by the Contract(s) awarded under this bid. Each such monthly Summary Billing invoice shall list separately each of the individual accounts included within each of the Account Group covered by the Contract(s) and shall provide the Dth of usage and the appropriate unit prices for each such account. The Port

Authority does not require that suppliers pro-rate for a calendar month; however, the Port Authority does ask that suppliers put all meter-reads that occur within a calendar month on the same summary invoice. The Contractor shall forward an original invoice by mail and one electronic copy of said invoice by e-mail to the Port Authority as follows:

- (i) One original copy by mail to:  
Office of Environmental and Energy Programs  
The Port Authority of New York and New Jersey  
225 Park Avenue South, 11<sup>th</sup> Floor  
New York, New York 10003
  - (ii) One electronic copy by e-mail to: PAEnergyData@panynj.gov
- b) The Contractor shall submit, within 45 days of the first meter reading date of each month following the month of commencement of this Contract and thereafter (including the month following the termination, revocation or expiration of this Contract), a complete and correct invoice for the Work performed during the preceding month accompanied by such information as may be required by the Manager for verification. Each invoice submitted pursuant to this Contract must show the Contractor's Federal Tax Identification Number. Payment will be made within thirty (30) days of Port Authority verification of the invoice.
  - c) The Contractor shall forward to the Port Authority by regular mail original invoices for the Natural Gas Supply Service provided and shall also e-mail electronic copies of said invoices to the Port Authority.
  - d) Dual-billing: The Port Authority has elected to receive, and Contractor(s) must provide, a separate billing statement (invoice) for Natural Gas Supply Service, only, strictly in accordance with the provisions of this Section 3. Such invoice shall not include any charges for distribution, transmission or other Local Distribution Company (LDC) charges. The Contractor(s) must notify the LDC with adequate advance notice of the dual-bill choice by the Port Authority so as not to jeopardize any switchover deadlines.
  - e) In consideration of the commodity provided by Contractor pursuant to this Contract, the Port Authority agrees to pay the unit price bid by the Contractor at auction, and accepted by the Port Authority, for the Account Group(s) covered by the awarded Contract, subject to adjustments permitted by the contract, multiplied by the actual Dth usage for the accounts included within the Account group(s) during each Billing Period.
  - f) The quantities of natural gas set forth in the invoices rendered by the Contractor or by the LDC applicable to any Billing Period shall be final and conclusive, subject to the provisions of Section 4, including but not limited to subparagraphs

4(h), 4(i), and 4(j) below, for purposes of computing the Port Authority's payments to the Contractor pursuant to this Paragraph 3.

- g) The Contractor(s) will be responsible for all costs, including, but not limited to, applicable taxes associated with the supply of natural gas. In no event shall the Contractor(s) adjust the amounts it charges the Port Authority or assess any additional charges based on any unforeseen or unanticipated costs it may incur, except for changes in the applicable State Sales and Use Tax or Changes in Law, as defined below, that become effective during the term of the Contract. If after the Port Authority has notified Contractor that it is the winning Bidder for particular Port Authority Account(s) or Account Groups a new Law, as defined below, shall be enacted, or there shall occur any amendments to any Law (including without limitation those that impose new taxes or change the rate of existing taxes), in either circumstance affecting approved rates, tariffs, taxes, charges, fees, assessments, or other costs relating to the licensing, supply, transmission or distribution of natural gas directly affecting the anticipated economic return to Contractor of supplying natural gas to the Port Authority under this Contract (any of the foregoing a "Change in Law"), Contractor shall send a written notice to the Port Authority at least thirty (30) days prior to the implementation of the Change in Law explaining how such Change in Law will directly affect the cost of supplying natural gas to the Port Authority under this Contract and including an explanation of its calculation of how such Change in Law would affect amounts payable by the Port Authority to the Contractor under this Contract. In such written notice to the Port Authority, the Contractor shall explain Contractor's calculation of how Contractor's costs will actually increase or decrease under this Contract, as applicable, as a result of such Change in Law. If such Change in Law will directly affect Contractor's cost of supplying natural gas to the Port Authority under this Contract, the Port Authority will confirm its acceptance of same by written notice to the Contractor within thirty (30) days of receipt of notification. The amounts payable by the Port Authority shall be accordingly adjusted upward or downward to take into account such changed economic consequences, and such amounts shall be included in subsequent invoices. In the case of downward adjustments, the Port Authority will be granted a credit against amounts owed to Contractor under future monthly invoices, or shall be issued a refund if no future monthly payments by the Port Authority are payable. For purposes of this paragraph only, "Law" shall mean any law, rule, regulation, ordinance, statute, judicial decision, administrative order, applicable LDC operating guideline or protocol, utility or applicable LDC tariff, rule of the public utilities commission, public service commission, pipeline or similar state commission or agency having jurisdiction over utilities, the Parties, natural gas transactions and the transmission or distribution systems under which authority the Account(s) are located.
- h) The Contract price for Natural Gas Supply Service shall include all charges associated with purchase and transportation of the Natural Gas Supply Service to the relevant City-gate, including all applicable taxes. Dual-bill invoices shall be based on usage as measured at the City-gate.

- i) If the Port Authority chooses to award only Basis for the term of the Contract, the Port Authority shall retain the option to convert the Contract at any time to a Firm, Fixed Price for the remaining term of the Contract at a price that is subject to mutual agreement and reflective of then-current market conditions. The Contractor(s) shall use reasonable efforts to monitor market conditions and to have its designated representative regularly advise the designated Port Authority representative of market events or conditions in order to assist the Port Authority in identifying opportunities to convert a floating price Contract to a fixed price basis. In the event the Commodity portion of the price for any month has not been locked prior to 1:00 pm on the last trading day of the NYMEX prompt month, the default NYMEX price shall be the Commodity settlement price.
- j) Monthly Electronic Summary Report: Contractor(s) shall provide the Port Authority and WES with a monthly, digital electric consumption summary containing the following information by account number: service start date, service end date, total consumption, and total charges. The monthly digital summary must adhere to the "World Energy Payment Instructions" documents posted at:

<https://www.wesplatform.com/webportal/Public/Announcement.aspx?ID=ue%2bKeBqTKvc%3d>.

The summary will be in a Microsoft Excel spreadsheet template and accompany each invoice. Receipt of the summary report is a prerequisite to payment of the relevant invoice by the Port Authority.

#### **4. Payment**

Subject to the provisions of this Contract, the Port Authority agrees to pay to the Contractor and the Contractor agrees to accept from the Port Authority as full and complete consideration for the performance of all its obligations under this Contract and as sole compensation for the Work performed by the Contractor hereunder a compensation calculated in accordance with the Port Authority's notice of Contract award. The manner of submission of all bills for payment to the Contractor by the Port Authority for Services rendered under this Contract shall be in accordance with Section 3, above, and shall be subject to the approval of the Manager in all respects, including, but not limited to, format, breakdown of items presented and verifying records. All computations made by the Contractor and all billing and billing procedures shall be done in conformance with the following procedures:

- a) Payment shall be made in accordance with the prices for the applicable service in accordance with the Port Authority's notice of Contract award, , minus any deductions for services not performed and/or any adjustments as may be required pursuant to increases and decreases in areas or frequencies, if applicable. All Work must be completed within the time frames specified or as designated by the Manager.
- b) No certificate, payment, acceptance of any Work or any other act or omission of any representative of the Port Authority shall operate to release the Contractor

from any obligation under or upon this Contract, or to stop the Port Authority from showing at any time that such certificate, payment, acceptance, act or omission was incorrect or to preclude the Port Authority from recovering any monies paid in excess of those lawfully due and any damage sustained by the Port Authority.

- c) The parties shall retain all billing and other records for a period of three (3) years following the expiration of the term of the Contract so as to permit either party to confirm the validity of payments due or made; provided, however, that if either party disputes the validity of any payments within one year of the expiration of the term of this Contract, then notwithstanding Section 17 of the Standard Contract Terms and Conditions, the parties will retain all records related to the dispute until it is finally resolved.
- d) A party may, in good faith, dispute the correctness of any invoice or any adjustment to an invoice provided under this Contract or adjust any invoice for errors within twelve (12) months from the date of the invoice or adjustment. Any invoice dispute or adjustment shall be in writing and shall state the basis for the dispute or adjustment. Payment of the disputed amount shall not be required until the dispute is resolved. Upon resolution of the dispute, any required payment shall be made within ten (10) business days of such resolution.
- e) In the event an audit of received invoices should indicate that the correct sum due the Contractor for the relevant Billing Period is less than the amount actually paid by the Port Authority, the Contractor shall pay to the Port Authority the difference promptly upon receipt of the Port Authority's statement thereof. The Port Authority may, however, in its discretion elect to deduct said sum or sums from any subsequent monthly payments payable to the Contractor hereunder.
- f) In the event of a dispute regarding any invoice issued or payment due under this Contract, each party shall have the right to verify, at its sole expense, the accuracy of the invoice or the calculation of the payment due by obtaining copies of relevant portions of the books and records of the other party. This right of verification will survive the termination of this Contract for a period of one year after termination.

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

## **5. Price Adjustment**

None

## **6. Contractor Performance**

- a) Contractor(s) shall deliver the Natural Gas Supply Service on a firm basis to the City-gate(s) without interruption at all times throughout the Contract term, subject only to an Event of Force Majeure.
- b) All Natural Gas Supply Service provided by Contractor(s) under this Contract shall meet all licensing requirements, standards, and regulations of the applicable state licensing agency (NYPSC and/or NJBPU), pipelines, the Federal Energy Regulatory Commission (FERC) and LDC specifications and State laws, particularly as they relate to providing Natural Gas Supply Service to the Port Authority.
- c) Contractor(s) shall ensure that all arrangements with the LDC have been completed within prescribed time periods to commence delivery on the Start Date, including the completion of required paperwork, coordination of information systems, coordination of operations and ability to communicate electronically if needed. Neither the Port Authority nor the Contractor(s) are responsible for delays attributable to the acts or omissions of the LDC.
- d) The Manager shall determine whether the Contractor has performed in a satisfactory manner, and this determination shall be final, binding and conclusive upon the Contractor.

## **7. Increase and Decrease in Number of Accounts**

- a) After award of the Contract to Contractor, the Port Authority reserves the right to increase or decrease the number of Accounts within an Account Group, at the contracted price under the same terms and conditions as applicable under this Contract, provided that the aggregate usage of all additional Accounts does not exceed, or, with respect to deleted Accounts, is less than the specified percentage of the contracted amount for the relevant Account Group as listed in Appendix I. This percentage is specified in Appendix I.
- b) For all accounts that exceed the limit specified in (a) above, the Port Authority shall provide an estimate of the natural gas requirements for said account(s) and the Contractor will be asked to provide a price for said account(s) under the same terms and conditions as applicable under this Contract. The Port Authority will provide this information at least forty-five (45) days prior to the desired flow date. The Contractor will have fifteen (15) days to provide a price for the new accounts. The Port Authority will have the ability to decline the price offered by the Contractor if it is not in the Port Authority's best interests, in its sole discretion. Adding and deleting accounts shall be accomplished through an amendment of this Contract.

- c) Any change in the Account number or designation of Account set forth in the Port Authority's Notice of Contract Award shall not be considered an addition or deletion of an Account.

#### **8. Title to Natural Gas**

The Contractor warrants title to all natural gas delivered to the applicable LDC "Delivery Point" and warrants that it has the right to sell same and that such natural gas is free from liens and adverse claims of every kind. The "Delivery Point" shall be that point on the distribution system at which the LDC takes possession and ownership of the natural gas supply (City-gate) for final delivery to the facility meter (Burnertip). This same delivery point shall be where the Facility takes title to the natural gas though the Contractor(s) is required to manage the delivery of the natural gas to the Burnertip.

#### **9. Risk of Loss**

Risk of loss of natural gas supplied under this Contract shall remain with the Contractor until, and shall pass to the Facility only upon, delivery of said natural gas to the Delivery Point for each facility account.

#### **10. Force Majeure**

- a) Either party to this Contract may be excused from performing its obligations and shall not be liable to the other party under this Contract as a result of an Event of Force Majeure, but only for the period during which, and to the extent that, such Event of Force Majeure renders the party unable to perform its obligations. The party claiming excuse of performance pursuant to this provision shall give written notice to the other party as soon as practicable after the occurrence of the Event of Force Majeure.
- b) Any suspension of performance pursuant to this provision shall not extend the term of this Contract.

In the event that either Party is delayed in or prevented from performing or carrying out its obligations under this Agreement by reason of an "Event of Force Majeure" which by the exercise of due diligence and foresight the Party could not reasonably have been expected to avoid and which by the exercise of due diligence the Party is unable to overcome, such Party shall not be liable to the other Party for or on account of any loss, damage, injury or expense resulting from or arising out of such delay or prevention; provided, however, that the Party encountering such delay or prevention shall give the other Party prompt notice thereof and shall use due diligence to remove the cause or causes thereof. Events of Force Majeure include a catastrophic weather condition, flood, fire, lightning, epidemic, quarantine, war, sabotage, act of a public enemy, earthquake, insurrection, riot, civil disturbance, strike, or restraint by court order or public authority, action or non-action by or inability to obtain authorization or approval from any governmental or other authority. The settlement of strikes and labor disturbances shall be wholly within the sole discretion of the

Party experiencing that difficulty. Economic hardship of either Party shall not constitute a Force Majeure under this Agreement.

An Event of Force Majeure will not include any events or consequences that result from a party's negligence, willful misconduct, or economic hardship, including increases in the price or cost of natural gas supply to the Contractor(s) to serve the Port Authority.

**PART IV – SIGNATURE SHEET, NAME AND RESIDENCE OF PRINCIPALS SHEET  
AND AUCTION PRICING**

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**PART IV – SIGNATURE SHEET, NAME AND RESIDENCE OF PRINCIPALS’ SHEET  
AND AUCTION PRICING**

**1. SIGNATURE SHEET**

OFFER: The undersigned offers and agrees to furnish to The Port Authority of New York and New Jersey the services and/or materials in compliance with all terms, conditions, specifications and Addenda of the Contract in the event that the Bidder’s bid, submitted through the World Energy Solutions, Incorporated, (hereinafter “WES” or “WES Energy”), auction platform, is accepted by the Port Authority. Signature also certifies understanding and compliance with the certification requirements of the standard terms and conditions as contained in the Standard Contract Terms and Conditions.

The undersigned certify that they are authorized to execute this solicitation on behalf of their respective organizations. This Agreement may be executed in two or more counterparts, each of which shall be an original.

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

Bidding Entity \_\_\_\_\_

Bidder’s Address \_\_\_\_\_

City, State, Zip \_\_\_\_\_

Telephone No. \_\_\_\_\_ FAX \_\_\_\_\_

Email \_\_\_\_\_ EIN# \_\_\_\_\_

SIGNATURE \_\_\_\_\_ Date \_\_\_\_\_

Print Name and Title \_\_\_\_\_

**ACKNOWLEDGEMENT:**

STATE OF: \_\_\_\_\_

COUNTY OF: \_\_\_\_\_

On this \_\_\_ day of \_\_\_\_\_, 20\_\_\_, personally came before me,  
\_\_\_\_\_, who duly sworn by me, did depose that (s)he has knowledge of the  
matters herein stated and they are in all respects true and that (s)he has been authorized to  
execute the foregoing offer and statement of irrevocability on behalf of said corporation,  
partnership or firm.

\_\_\_\_\_  
Notary Public

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

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

If certified by the Port Authority as an SBE or MWBE: \_\_\_\_\_ (indicate which one and date).

**2. NAME AND RESIDENCE OF PRINCIPALS SHEET**

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

NAME	TITLE	ADDRESS OF RESIDENCE (Do not give business address)
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### 3. AUCTION PRICING

Bids submitted through the auction must be held firm for two hours after auction close, but no Bid will be required to be held firm past 3:00 PM Eastern Time on the day of the auction. However, if the NYMEX Henry Hub 12 month natural gas strip as quoted at [www.nymex.com](http://www.nymex.com) moves up or down by more than 7.5% at any time between the auction start time and auction end time as compared to the NYMEX Henry Hub settled price, only, as published in Platt's Gas Daily, the Port Authority will not require Bidders to hold their bid prices if award notification has not already been provided; however, Bidders may hold their bid prices at their own risk.

A Bidder must notify WES via e-mail at [szurbrick@worldenergy.com](mailto:szurbrick@worldenergy.com) if it wishes to delete a bid prior to award notification, due to such a market movement of more than 7.5% in either direction; verbal communication will not be accepted. WES and the Port Authority, in their sole discretion, must verify such market movement of more than 7.5% in either direction (and shall send an email to Bidder confirming the same) in order for that Bidder's bid to be cancelled. Otherwise, if no verification of such market movement is made by the Port Authority and WES, the Bidder's bid shall not be cancelled and will remain in effect for purposes of the auction.

The Port Authority is utilizing an internet-based energy auction platform provided by WES to obtain pricing for this procurement. Prequalified Bidders invited to participate in the auction(s) shall submit bids, including prices, at [www.wesplatform.com](http://www.wesplatform.com) in accordance with the instructions in this solicitation and appearing on the WES:

<https://www.wesplatform.com/webportal/Public/Announcement.aspx?ID=ue%2bKeBqTKvc%3d>

A detailed auction schedule will be posted prior to the day of the auction(s). All pricing information must be submitted on the WES auction platform by the close of each reverse auction. Any bid submitted through the auction platform on the day of the auction, prior to auction close, is considered binding. Bids will only be considered on the date they are received. Once a price quote for an Account Group is accepted and awarded by the Port Authority, no further quotes for that Account Group will be considered.

Alternate bids (bids on terms or conditions different than those established by this bid solicitation) are not permitted; all prices submitted through the WES auction platform shall be in accordance with the provisions of this bid solicitation. It shall be the express responsibility of the Bidder to understand both the rules and the mechanics of the WES auction platform.

In each auction, all bid prices must be entered in **dollars per dekatherm with five decimal places**. If a bid is accepted by the Port Authority, the Contractor(s) will be held to its bid price for the entire Contract term, and Contractor shall be responsible, at its sole cost and expense, for all production, severance, ad valorem or similar taxes levied on the supply, acquisition, purchase, delivery of, and all other activities associated with, the provision of Natural Gas Supply Service by Contractor to the relevant City-gate.

Bidders are advised that the Port Authority, in its discretion, may verify only that bid or those bids that it determines are appropriate to verify and may not check each bid for computational errors that are made by a Bidder. The Port Authority reserves the right to allow bidders to correct any errors and to re-compute Bidder's computations, as required, based on any such corrections needed. In the event that any such corrections or re-computations are made, they shall be based, as applicable, on the Unit Price(s) (dollar per Dth) inserted by the Bidder, which amount(s) shall govern in all cases.

All Bidders are asked to ensure that all figures are inserted as required, and that all computations made have been verified by the Bidder for accuracy.

#### **4. FEE STRUCTURE**

Each Bidder hereby agrees to pay a service fee of \$0.08 per Dth to WES, based on actual Dth usage for all Account Groups awarded through the WES auction process. The service fee should be factored into the Bidder's bid price.

This fee will be paid by the successful Contractor(s) directly to WES in accordance with the Payment Instructions Document found at:

<https://www.wesplatform.com/webportal/Public/Announcement.aspx?ID=ue%2bKeBqTKvc%3d>

This service fee shall apply to the Base Term of the Contract. The service fee that may apply to any Option Period(s) will be determined and disclosed to the Contractor(s) at the time of the Port Authority's exercise of such Option Period(s), if exercised.

The Contractor(s) shall be responsible for providing a summary accounting of the monthly volume of natural gas delivered (as described in Part III, section 3(j) of this solicitation) and the resulting fees paid to WES per Account on or before the twenty-fifth (25th) day of each month in accordance with the Payment Instructions Document found at:

<https://www.wesplatform.com/webportal/Public/Announcement.aspx?ID=ue%2bKeBqTKvc%3d>

**PART V – SPECIFICATIONS, TABLE OF CONTENTS**

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## PART V – SPECIFICATIONS

### 1a. Specific Definitions

**Account:** Accounts for natural gas supply as metered by the Port Authority's Local Distribution Company (LDC) and identified in Appendix I.

**Account Group:** A combination of Port Authority natural gas Accounts compiled by the Port Authority and listed in Appendix I, for purposes of the internet-based energy auction platform upon which bids will be solicited from Pre-Qualified Bidders.

**Adjusted Market Cost/Outside Swing Usage (\$):** In the case of an Account Group consuming more Dth than the Maximum Monthly Consumption Amount or less than the Minimum Monthly Consumption Amount, the following formula will be used to calculate the adjusted cost:

Incremental volumes outside the swing will be priced at the GDM monthly average plus/minus \$0.15/Dth, for the delivery month based on the delivery split into the affected LDC's city-gate (e.g. currently 60% Transco Z6 NY and 40% TETCO M3 for Public Service Electric & Gas (PSEG)).

**Basis:** The "Basis" component of the price is fixed and held for the length of the contract, and shall include all applicable taxes (in particular NJ Sales and Use Tax), the underlying interstate transportation contracts, supplier margin, shrinkage, pooling risk premium adjustment, meter-reading, balancing, administrative fees and any additional charges concerning transportation to the city-gate including the World Energy fee.

**Billing Period:** The period between actual or estimated meter readings used by the LDC for billing purposes.

**Burnertip:** Point at which facilities receive natural gas, i.e. the Facilities' meters.

**City-gate:** Point at which the LDC takes possession of the natural gas for delivery to the Port Authority Facilities.

**Commodity:** The "Commodity" component of the price shall be based on the NYMEX and locked in (or not) by the Port Authority and the Contractor as appropriate given market conditions. The Port Authority has the right to lock in the Commodity component on a month-to-month basis, or for other intervals of time up to the full term of the Contract for a portion of or the entire load awarded to the Contractor. The Commodity component shall be the price for the NYMEX futures contract for the delivery month(s). The Contractor will coordinate NYMEX locks with the designated Port Authority representative.

**Consumption During Billing Period:** Consumption During Billing Period shall be the number of Dth consumed during a single billing period for all accounts in a

single account group as reported by the relevant LDC. Note that this calculation is used for the purposes of determining an Account Group's swing; the Port Authority requires that billing be consistent with utility meter reads.

**Contract Rate:** The \$/Dth rate as shown in the Port Authority Notice of Contract award.

**Delivery Point:** The Delivery Point is the point on the distribution system at which the LDC takes possession and ownership of the natural gas supply (City-gate) for final delivery to the facility meter (Burnertip). This same delivery point shall be where the Facility takes title to the natural gas though Contractors are required to manage the natural gas to the Burnertip.

**Electronic Data Interchange (EDI):** An electronic means of exchanging account and usage information and for executing various transactions between electric power suppliers and LDCs that is subject to specific protocols by the applicable state regulatory authority.

**Firm, Fixed Price Natural Gas Supply Service:** The price for Natural Gas Supply Service that is based on a single, per Dth amount that remains fixed throughout the duration of the Contract. This price includes the cost of Basis and Commodity.

**Local Distribution Company (LDC):** A public utility that transmits and distributes natural gas to end users. For purposes of this Contract, the relevant LDCs in New York include National Grid and ConEdison and the relevant LDC in New Jersey is the Public Service Electric and Gas Company (PSEG).

**Maximum Monthly Consumption Amount:** The maximum amount of natural gas an Account Group consumes during a Billing Period without being subject to the Adjusted Market Cost. The Maximum Monthly Consumption Amount is calculated by the following formula:

$(\text{Swing \%} + 100\%) \times (\text{historical usage during the relevant Billing Period as set forth on Appendix I}).$

**Minimum Monthly Consumption Amount:** The minimum amount of natural gas an Account Group consumes during a Billing Period without being subject to the Adjusted Market Cost. The Minimum Monthly Consumption Amount is calculated by the following formula:

$(100\% - \text{Swing \%}) \times (\text{historical usage during the relevant Billing Period as set forth on Appendix I}).$

**Meter Read Date:** The Day on which a natural gas Account's meter is read, as established by the relevant LDC for that Account.

**Natural Gas Supply Service:** The provision of natural gas to the relevant City-gate for supply to Port Authority accounts, including agreements and arrangements related thereto.

**New York Mercantile Exchange (NYMEX) Henry Hub:** The pricing point for natural gas futures contracts traded on the New York Mercantile Exchange. NYMEX is a dedicated contract market that offers products subject to NYMEX rules and regulations.

### **1b. Pricing Product Instructions**

All bids must be made in accordance with the following pricing instructions, any Addenda issued by the Port Authority and the instructions provided by World Energy Solutions, Incorporated, (hereinafter "WES" or "WES Energy"), on its energy auction platform.

The Port Authority is considering two (2) alternative pricing structures (products) for the various Account Groups set forth in Appendix I. The two alternative pricing structures for which the Port Authority is requesting bids are as follows:

1. **Firm, Fixed Price Natural Gas Supply Service:** Bids for this Account Group should consist of a single price per Dth for Natural Gas Supply Service.

Firm, fixed prices for all Accounts in the State of New York and the State of New Jersey should include all services and products necessary to provide delivery of natural gas to the Port Authority for all Dth metered by the LDC, including but not limited to Basis and Commodity. Bids should include all applicable state sales and use taxes.

2. **Basis Price – Natural Gas Supply Service:** Bids for this Account Group should consist of a single fixed Basis price per Dth; the price for Commodity may vary on a monthly basis in accordance with NYMEX or may be locked in by the Port Authority.

The "Commodity" component of the price shall be based on the NYMEX and may be locked in by the Port Authority and the contractor as appropriate given market conditions. The Port Authority has the right to lock in the Commodity component on a month-to-month basis, or for other intervals of time up to the full term of the contract for a portion of or the entire load awarded to the Contractor. The Commodity component shall be the price for the NYMEX futures contract for the delivery month(s). The Contractor will coordinate NYMEX locks with the designated Port Authority representative

**Swing:** For each Account Group, there will be a percentage of the volumes listed in Appendix I for the same month of consumption in the previous year. Swing for a particular Account Group will be provided on Appendix I. Maximum Monthly Consumption Amounts and Minimum Monthly Consumption Amounts will be based on total volumes at the Account Group level rather than the individual Account level.

Account Groups will have both a Minimum and Maximum Monthly Consumption Amount. For any volumes used over the Maximum Monthly Consumption Amount, the Contractor will calculate the Adjusted Market Cost to determine the cost per Dth for the volume that exceeded the Maximum Monthly Consumption Amount. For any volumes used under the Minimum Monthly Consumption Amount, the Contractor will calculate the Adjusted Market Cost to determine the cost per Dth for unused volumes. Suppliers bidding on products that have a specified Swing % must apply, at a minimum, the % specified.

## **2. Work Required by the Specifications**

These Specifications relate generally to the performance of providing Natural Gas Supply Service required by this Contract.

The scope of work is as follows:

- a) The Port Authority has issued this bid for the purchase of Natural Gas Supply Service pursuant to the laws in New York and New Jersey that govern and regulate the natural gas markets and the selection of Natural Gas Supply Service supplier(s) to purchase such service for Port Authority Accounts in the states of New York and/or New Jersey.
- b) The selected Contractor(s) will sell to the Port Authority, and the Port Authority agrees to purchase from Contractor, Natural Gas Supply Service for use by the Port Authority for the applicable Account Group(s) pursuant to the terms and conditions of this bid, including any Addenda thereto, and the relevant utility tariffs.
- c) The Port Authority shall not be responsible for any expenditure of monies or other expenses Bidders incur before issuance of a Contract, purchase order or agreement, and, thereafter, only as provided by the Contract.
- d) The Contractor shall be in compliance with applicable utility tariffs and NJBPU and NYPSA-approved rules applicable to third party suppliers.
- e) The Contractor(s) will provide Natural Gas Supply Service to all of the Port Authority Accounts within the Account Group(s) for which an award has been made to the Contractor.
- f) In the sole discretion of the Port Authority, Natural Gas Supply Service will be provided to all Accounts in a given Account Group at either: (i) a Firm, Fixed Price Natural Gas Supply Service for the entire Contract term; or (ii) a Basis Price for Natural Gas Supply Service.

If the Basis Price for Natural Gas Supply Service product under subparagraph (ii) under paragraph (f), above, is selected by the Port Authority, the Port Authority shall retain the right at any time during the term of the Contract to seek a quote from the Contractor for a Firm, Fixed Price Natural Gas Supply Service and to

convert, without penalty or fee, to a fixed price product for a mutually agreed upon duration at a price agreed upon by the parties and consistent with then-prevailing market conditions.

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## STANDARD CONTRACT TERMS AND CONDITIONS

### PART I GENERAL DEFINITIONS

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

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

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

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

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

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

Director - shall mean the Director of Environmental and Energy Programs, the Department which operates the facility of the Port Authority at which the services hereunder are to be performed, for the time being, or his/her successor in duties for the purpose of this Contract, acting personally or through one of his/her authorized representatives for the purpose of this Contract.

Manager - shall mean the Deputy Director for Energy, Office of Environmental and Energy Programs, for the time being or his successor in duties for the purpose of this Contract, acting personally or through his duly authorized representative for the purpose of this Contract.

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

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

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

- (a) Black persons having origins in any of the Black African racial groups not of Hispanic origin;
- (b) Hispanic persons of Mexican, Puerto Rican, Dominican, Cuban, Central or South American culture or origin, regardless of race;
- (c) Asian and Pacific Islander persons having origins in any of the original peoples of the Far East,

Southeast Asia, The Indian Subcontinent, or the Pacific Islands;

- (d) Native American or Alaskan native persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification.

Site of the Work - or words of similar import shall mean the Facility and all buildings and properties associated therewith as described in this Contract.

Small Business Enterprise (SBE) - The criteria for a Small Business Enterprise are:

- o The principal place of business must be located in New York or New Jersey;
- o The firm must have been in business for at least three years with activity;
- o Average gross income limitations by industry as established by the Port Authority.

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

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

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

## **PART II GENERAL PROVISIONS**

### **1. Facility Rules and Regulations of The Port Authority**

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

### **2. Contractor Not An Agent**

This Agreement does not constitute the Contractor the agent or representative of the Port Authority for any

purpose whatsoever except as may be specifically provided in this Agreement. It is hereby specifically acknowledged and understood that the Contractor, in performing its services hereunder, is and shall be at all times an independent Contractor and the officers, agents and employees of the Contractor shall not be or be deemed to be agents, servants or employees of the Port Authority.

### **3. Contractor's Warranties**

The Contractor represents and warrants:

- a. That it is financially solvent, that it is experienced in and competent to perform the requirements of this Contract, that the facts stated or shown in any papers submitted or referred to in connection with the solicitation are true, and, if the Contractor be a corporation, that it is authorized to perform this Contract;
- b. That it has carefully examined and analyzed the provisions and requirements of this Contract, and that from its own investigations it has satisfied itself as to the nature of all things needed for the performance of this Contract, the general and local conditions and all other matters which in any way affect this Contract or its performance, and that the time available to it for such examination, analysis, inspection and investigation was adequate;
- c. That the Contract is feasible of performance in accordance with all its provisions and requirements and that it can and will perform it in strict accordance with such provisions and requirements;
- d. That no Commissioner, officer, agent or employee of the Port Authority is personally interested directly or indirectly in this Contract or the compensation to be paid hereunder;
- e. That, except only for those representations, statements or promises expressly contained in this Contract, no representation, statement or promise, oral or in writing, of any kind whatsoever by the Port Authority, its Commissioners, officers, agents, employees or consultants has induced the Contractor to enter into this Contract or has been relied upon by the Contractor, including any with reference to: (1) the meaning, correctness, suitability, or completeness of any provisions or requirements of this Contract; (2) the nature, quantity, quality or size of the materials, equipment, labor and other facilities needed for the performance of this Contract; (3) the general or local conditions which may in any way affect this Contract or its performance; (4) the price of the Contract; or (5) any other matters, whether similar to or different from those referred to in (1) through (4) immediately above, affecting or having any connection with this Contract, the bidding thereon, any discussions thereof, the performance thereof or those employed therein or connected or concerned therewith.

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

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

### **4. Personal Non-Liability**

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

### **5. Equal Employment Opportunity, Affirmative Action, Non-Discrimination**

- a. The Contractor is charged with having full knowledge of and shall comply with all applicable federal,

State and local statutes, ordinances, rules and regulations and, federal Executive Orders, pertaining to equal employment opportunity, affirmative action, and non-discrimination in employment.

- b. Without limiting the generality of any other term or provision of this Contract, in the event of the Contractor's non-compliance with the equal opportunity and non-discrimination clause of this Contract, or with any of such statutes, ordinances, rules, regulations or Orders, this Contract may be cancelled, terminated or suspended in whole or in part.

## **6. Rights and Remedies of the Port Authority**

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

- a. The right to take over and complete the Work or any part thereof as agent for and at the expense of the Contractor, either directly or through others.
- b. The right to cancel this Contract as to any or all of the Work yet to be performed.
- c. The right to specific performance, an injunction or any appropriate equitable remedy.
- d. The right to money damages.

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

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

## **7. Rights and Remedies of the Contractor**

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

## **8. Submission To Jurisdiction**

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

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

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

## **9. Harmony**

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

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

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

## **10. Claims of Third Persons**

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

## **11. No Third Party Rights**

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

## **12. Provisions of Law Deemed Inserted**

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

### **13. Costs Assumed By The Contractor**

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

### **14. Default, Revocation or Suspension of Contract**

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

1. If fire or other cause shall destroy all or a substantial part of the Facility.
2. If any governmental agency shall condemn or take a temporary or permanent interest in all or a substantial part of the Facility, or all of a part of the Port Authority's interest herein;

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

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

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

1. The Contractor shall become insolvent, or shall take the benefit of any present or future insolvency statute, or shall make a general assignment for the benefit of creditors, or file a voluntary petition in bankruptcy or a petition or answer seeking an arrangement or its reorganization or the readjustment of its indebtedness under the federal bankruptcy laws or under any other law or statute of the United States or of any State thereof, or consent to the appointment of a receiver, trustee, or liquidator of all or substantially all its property; or
2. By order or decree of a court the Contractor shall be adjudged bankrupt or an order shall be made approving a petition filed by any of the creditors, or, if the Contractor is a corporation, by any of the stockholders of the Contractor, seeking its reorganization or the readjustment of its indebtedness under the federal bankruptcy laws or under any law or statute of the United States or of any State thereof; or
3. A petition under any part of the federal bankruptcy laws or an action under any present or future insolvency law or statute shall be filed against the Contractor and shall not be dismissed within thirty (30) days after the filing thereof; or
4. The interest of the Contractor under this Contract shall be transferred to, passed to or devolve upon, by operation of law or otherwise, any other person, firm or corporation, or
5. The Contractor, if a corporation, shall, without the prior written approval of the Port Authority, become a surviving or merged corporation in a merger, a constituent corporation in a consolidation, or a corporation in dissolution; or
6. If the Contractor is a partnership, and the said partnership shall be dissolved as the result of any act or omission of its copartners or any of them, or by operation of law or the order or

decree of any court having jurisdiction, or for any other reason whatsoever; or

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

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

c. If any of the following shall occur:

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

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

- d. If any of the events enumerated in this Section shall occur prior to commencement date of this Contract the Port Authority upon the occurrence of any such event or any time thereafter during the continuance thereof by twenty-four (24) hours notice may terminate or suspend this Contract and the rights of the Contractor hereunder, such termination or suspension to be effective upon the date specified in such notice.
- e. No payment by the Port Authority of any monies to the Contractor for any period or periods after default of any of the terms, covenants or conditions hereof to be performed, kept and observed by the Contractor and no act or thing done or omitted to be done by the Port Authority shall be deemed to be a waiver of the right of the Port Authority to terminate this Contract or of any other right or remedies to which the Port Authority may be entitled because of any breach thereof. No waiver by the Port Authority of any default on the part of the Contractor in the performance of any of the terms, covenants and conditions hereof to be performed, kept or observed by the Contractor shall be or be construed to be a waiver by the Port Authority of any other subsequent default in the performance of any of the said terms, covenants and conditions.
- f. Any right of termination contained in this paragraph, shall be in addition to and not in lieu of any and all rights and remedies that the Port Authority shall have at law or in equity consequent upon the Contractor's breach of this Contract and shall be without prejudice to any and all such other

rights and remedies. It is hereby specifically agreed and understood that the exercise by the Port Authority of any right of termination set forth in this paragraph shall not be or be deemed to be an exercise by the Port Authority of an election of remedies so as to preclude the Port Authority from any right to money damages it may have for the period prior to the effective date of termination to the original expiration date of the Contract, and this provision shall be deemed to survive the termination of this Contract as aforesaid.

- g. If (1) the Contractor fails to perform any of its obligations under this Contract or any other agreement between the Port Authority and the Contractor (including its obligation to the Port Authority to pay any claim lawfully made against it by any supplier, subcontractor or worker or other person which arises out of or in connection with the performance of this Contract or any other agreement with the Port Authority) or (2) any claim (just or unjust) which arises out of or in connection with this Contract or any other agreement between the Port Authority and the Contractor is made against the Port Authority or (3) any subcontractor under this Contract or any other agreement between the Port Authority and the Contractor fails to pay any claims lawfully made against it by any supplier, subcontractor, worker or other third person which arises out of or in connection with this Contract or any other agreement between the Port Authority and the Contractor or if in the opinion of the Port Authority any of the aforesaid contingencies is likely to arise, then the Port Authority shall have the right, in its discretion, to withhold out of any payment (final or otherwise) such sums as the Port Authority may deem ample to protect it against delay or loss or to assure the payment of just claims of third persons, and to apply such sums in such manner as the Port Authority may deem proper to secure such protection or satisfy such claims. All sums so applied shall be deducted from the Contractor's compensation. Omission by the Port Authority to withhold out of any payment, final or otherwise, a sum for any of the above contingencies, even though such contingency has occurred at the time of such payment, shall not be deemed to indicate that the Port Authority does not intend to exercise its right with respect to such contingency. Neither the above provisions for rights of the Port Authority to withhold and apply monies nor any exercise or attempted exercise of, or omission to exercise, such rights by the Port Authority shall create any obligation of any kind to such supplier, subcontractors, worker or other third persons. If, however, the payment of any amount due the Contractor shall be improperly delayed, the Port Authority shall pay the Contractor interest thereon at the rate of 6% per annum for the period of the delay, it being agreed that such interest shall be in lieu of and in liquidation of any damages to the Contractor because of such delay.
- h. If the Port Authority has paid any sum or has incurred any obligation or expense which the Contractor has agreed to pay or reimburse the Port Authority, or if the Port Authority is required or elects to pay any sum or sums or incurs any obligations or expense by reason of the failure, neglect or refusal of the Contractor to perform or fulfill any one or more of the conditions, covenants, or agreements contained in this Contract, or as a result of an act of omission of the Contractor contrary to the said conditions, covenants and agreements, the Contractor shall pay to the Port Authority the sum or sums so paid or expense so incurred, including all interests, costs and damages, promptly upon the receipt of the Port Authority's statement therefore. The Port Authority may, however, in its discretion, elect to deduct said sum or sums from any payment payable by it to the Contractor.
- i. If the Port Authority pays any installment to the Contractor without reducing said installment as provided in this Contract, it may reduce any succeeding installment by the proper amount, or it may bill the Contractor for the amount by which the installment paid should have been reduced and the Contractor shall pay to the Port Authority any such amount promptly upon receipt of the Port Authority's statement therefore.
- j. The Port Authority shall also have the rights set forth above in the event the Contractor shall become insolvent or bankrupt or if his affairs are placed in the hands of a receiver, trustee or assignee for the benefit of creditors.

## **15. Sales or Compensating Use Taxes**

Purchases of services and tangible personal property by the Port Authority in the States of New York and New Jersey are generally exempt from New York State, New Jersey State and federal taxes, as well as local sales and compensating use taxes; therefore the Port Authority is not subject to taxes on the services performed by the Contractor. However, the Port Authority's purchase of natural gas from the Contractor under this Contract is subject to the utility tax as set forth in N.J.S.A. 54:32B-9(a)(1). Accordingly, the Contractor must include a calculation of the New Jersey utilities sales and use taxes in the price charged to the Port Authority under this Contract. The Contractor shall retain a copy of this Contract to substantiate the calculation of the New Jersey utility tax to be charged to the Port Authority.

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

## **16. No Estoppel or Waiver**

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

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

## **17. Records and Reports**

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

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

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

- a. The Contractor hereby further agrees to furnish to the Port Authority from time to time such written reports in connection with its operations hereunder as the Port Authority may deem necessary or desirable. The format of all forms, schedules and reports furnished by the Contractor to the Port Authority shall be subject to the continuing approval of the Port Authority.
- b. No provision in this Contract giving the Port Authority a right of access to records and documents is intended to impair or affect any right of access to records and documents which they would have in the absence of such provision. Additional record keeping may be required under other sections of this Contract.

## **18. General Obligations**

- a. Except where expressly required or permitted herein to be oral, all notices, requests, consents and approvals required to be given to or by either party shall be in writing and all such notices, requests, consents and approvals shall be personally delivered to the other party during regular business hours or forwarded to such party by United States certified mail, return receipt requested, addressed to the other party at its address hereinbefore or hereafter provided. Until further notice the Contractor hereby designates the address shown on the bottom of the Contractors Signature Sheet as their address to which such notices, requests, consents, or approvals may be forwarded. All notices, requests, consents, or approvals of the Contractor shall be forwarded to the Manager at the Facility.
- b. The Contractor shall comply with the provisions of all present and future federal, state and municipal laws, rules, regulations, requirements, ordinances, orders and directions which pertain to its operations under this Contract and which affect the Contract or the performance thereof and those engaged therein as if the said Contract were being performed for a private corporation, except where stricter requirements are contained in the Contract in which case the Contract shall control. The Contractor shall procure for itself all licenses, certificates, permits or other authorization from all governmental authorities, if any, having jurisdiction over the Contractor's operations hereunder which may be necessary for the Contractor's operations. The Contractor's obligation to comply with governmental requirements are not to be construed as a submission by the Port Authority to the application to itself of such requirements.
- c. The Contractor shall pay all taxes, license, certification, permit and examination fees and excises which may be assessed on its property or operations hereunder or income therefrom, and shall make all applications, reports and returns required in connection therewith.
- d. The Contractor shall, in conducting its operations hereunder, take all necessary precautions to protect the general environment and to prevent environmental pollution, contamination, damage to property and personal injury.

## **19. Assignments and Subcontracting**

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

mortgage, pledge, subcontract, assignment or contract without such prior written approval shall be void as to the Port Authority. The Port Authority shall have the option to assign this contract upon written approval from the Contractor, which shall not be unreasonably withheld.

- b. All subcontractors who provide permanent personnel to the Contractor for work under this Contract shall be given written notice to comply with all requirements of the Contract. The Contractor shall be responsible and liable for the performance and acts of each subcontractor.
- c. All persons to whom the Contractor sublets services shall be deemed to be its agents and no subletting or approval thereof shall be deemed to release this Contractor from its obligations under this Contract or to impose any obligations on the Port Authority to such subcontractor or to give the subcontractor any rights against the Port Authority.

## **20. Indemnification and Risks Assumed By The Contractor**

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

The Contractor assumes the following risks, whether such risks arise from acts or omissions (negligent or not) of the Contractor, the Port Authority or third persons (including Contractor's employees, employees, officers, and agents of the Port Authority) or from any other cause, excepting only risks occasioned solely by affirmative willful acts of the Port Authority done subsequent to the opening of proposals on this Contract, and shall to the extent permitted by law indemnify the Port Authority for all loss or damage incurred in connection with such risks:

- a. The risk of claim, whether made against the Contractor or the Port Authority, for any and all loss or damages occurring to any property, equipment (including but not limited to automotive and/or mobile equipment), materials and possessions of the Contractor's agents, employees, materialmen and others performing work hereunder.
- b. The risk of claims for injuries, damage or loss of any kind just or unjust of third persons arising or alleged to arise out of the performance of work hereunder, whether such claims are made against the Contractor or the Port Authority.

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

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

property or environmental impairment arising out of its operations.

## **21. Approval of Methods**

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

## **22. Modification of Contract**

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

## **23. Invalid Clauses**

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

## **24. Contract Records and Documents – Passwords and Codes**

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

When in the performance of the contract services the Contractor utilizes passwords or codes for any purpose, at any time during or after the performance of such services, upon written request by the Authority, the Contractor shall make available to the designated Authority representative all such passwords and codes.

## **25. Confidential Information/Non-Publication**

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

b. Confidential information shall also mean and include collectively, as per *The Port Authority of New York & New Jersey Information Security Handbook (October 15, 2008, corrected as of February, 9 2009)*, Confidential Proprietary Information, Confidential Privileged Information and information that is labeled, marked or otherwise identified by or on behalf of the Authority so as to reasonably connote that such information is confidential, privileged, sensitive or proprietary in nature. Confidential Information shall also include all work product that contains or is derived from any of the foregoing, whether in whole or in part, regardless of whether prepared by the Authority or a third-party or when the Authority receives such information from others and agrees to treat such information as Confidential.

c. The Contractor shall hold all such confidential information in trust and confidence for the Authority, and agrees that the Contractor and the personnel provided by the Contractor hereunder shall not, during or after the termination or expiration of this Contract, disclose to any person, firm or corporation, nor use for its own business or benefit, any information obtained by it under or in connection with the supplying of services contemplated by this Contract. The Contractor and the personnel provided by the Contractor hereunder shall not violate in any manner any patent, copyright, trade secret or other proprietary right of the Authority or third persons in connection with their services hereunder, either before or after termination or expiration of this Contract. The Contractor and the personnel provided by the Contractor hereunder shall not willfully or otherwise perform any dishonest or fraudulent acts, breach any security procedures, or damage or destroy any hardware, software or documentation, proprietary or otherwise, in connection with their services hereunder. The Contractor shall promptly and fully inform the Director in writing of any patent, copyright, trade secret or other intellectual property rights or disputes, whether existing or potential, of which the Contractor has knowledge, relating to any idea, design, method, material, equipment or other matter related to this Contract or coming to the Contractor's attention in connection with this Contract."

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

## **26. Time is of the Essence**

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

## **27. Personnel Standards**

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

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

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

## **28. Manager's Authority**

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

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

## 29. Price Preference

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

- (a) Services, a price preference of 5% is available for New York or New Jersey Small Business Enterprises (SBE); or
- (b) Services (excluding Janitorial/Cleaning Services), a price preference of 10% is available for New York or New Jersey Minority or Women Business Enterprises (M/WBE),

certified by the Port Authority by the day before the bid opening.

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

## 30. M/WBE Good Faith Participation

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

Good Faith efforts to include participation by MBEs/WBEs shall include the following:

- a. Dividing the services and materials to be procured into small portions, where feasible.
- b. Giving reasonable advance notice of specific contracting, subcontracting and purchasing opportunities to such MBEs/WBEs as may be appropriate.
- c. Soliciting services and materials from a Port Authority certified MBE/WBE or seeking MBEs/WBEs from other sources. To access the Port Authority's Directory of MBE/WBE Certified Firms go to [www.panynj.gov/supplierdiversty](http://www.panynj.gov/supplierdiversty)
- d. Ensuring that provision is made to provide progress payments to MBEs/WBEs on a timely basis.
- e. Observance of reasonable commercial standards of fair dealing in the respective trade or business.

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

The Contractor shall also submit to the Manager, along with invoices, the Statement of Subcontractor Payments as the M/WBE Participation Report, which may be downloaded at <http://www.panynj.gov/business-opportunities/become-vendor.html>. The Statement must include the name and business address of each M/WBE subcontractor and supplier actually involved in the Contract, a description of the work performed and/or product or service supplied by each such subcontractor or

supplier, the date and amount of each expenditure, and such other information that may assist the Manager in determining the Contractor's compliance with the foregoing provisions.

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

### **PART III CONTRACTOR'S INTEGRITY PROVISIONS**

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

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

- a. been indicted or convicted in any jurisdiction;
- b. been suspended, debarred, found not responsible or otherwise disqualified from entering into any contract with any governmental agency or been denied a government contract for failure to meet standards related to the integrity of the Bidder;
- c. had a contract terminated by any governmental agency for breach of contract or for any cause based in whole or in part on an indictment or conviction;
- d. ever used a name, trade name or abbreviated name, or an Employer Identification Number different from those inserted in the Bid;
- e. had any business or professional license suspended or revoked or, within the five years prior to bid opening, had any sanction imposed in excess of \$50,000 as a result of any judicial or administrative proceeding with respect to any license held or with respect to any violation of a federal, state or local environmental law, rule or regulation;
- f. had any sanction imposed as a result of a judicial or administrative proceeding related to fraud, extortion, bribery, bid rigging, embezzlement, misrepresentation or anti-trust regardless of the dollar amount of the sanctions or the date of their imposition; and
- g. been, and is not currently, the subject of a criminal investigation by any federal, state or local prosecuting or investigative agency and/or a civil anti-trust investigation by any federal, state or local prosecuting or investigative agency.

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

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

- a. the prices in its bid have been arrived at independently without collusion, consultation, communication or agreement for the purpose of restricting competition, as to any matter relating to such prices with any other bidder or with any competitor;
- b. the prices quoted in its bid have not been and will not be knowingly disclosed directly or indirectly by the Bidder prior to the official opening of such bid to any other bidder or to any competitor;
- c. no attempt has been made and none will be made by the Bidder to induce any other person, partnership or corporation to submit or not to submit a bid for the purpose of restricting competition;
- d. this organization has not made any offers or agreements or taken any other action with respect to any Authority employee or former employee or immediate family member of either which

- would constitute a breach of ethical standards under the Code of Ethics dated April 11, 1996, (a copy of which is available upon request to the individual named in the clause hereof entitled "Bidder's Questions"), nor does this organization have any knowledge of any act on the part of an Authority employee or former Authority employee relating either directly or indirectly to this organization which constitutes a breach of the ethical standards set forth in said Code;
- e. no person or selling agency other than a bona fide employee or bona fide established commercial or selling agency maintained by the Bidder for the purpose of securing business, has been employed or retained by the Bidder to solicit or secure this Contract on the understanding that a commission, percentage, brokerage, contingent, or other fee would be paid to such person or selling agency; and
  - f. the bidder has not offered, promised or given, demanded or accepted, any undue advantage, directly or indirectly, to or from a public official or employee, political candidate, party or party official, or any private sector employee (including a person who directs or works for a private sector enterprise in any capacity), in order to obtain, retain, or direct business or to secure any other improper advantage in connection with this Contract.

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

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

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

In any case where the Bidder cannot make the foregoing certifications, the Bidder shall so state and shall furnish with the signed bid a signed statement which sets forth in detail the reasons therefor. If the Bidder is uncertain as to whether it can make the foregoing certifications, it shall so indicate in a signed statement furnished with its bid, setting forth in such statement the reasons for its uncertainty. As a result of such disclosure, the Port Authority shall take appropriate action up to and including a finding of non-responsibility.

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

Notwithstanding that the Bidder may be able to make the foregoing certifications at the time the bid is submitted, the Bidder shall immediately notify the Authority in writing during the period of irrevocability of bids on this Contract of any change of circumstances which might under this clause make it unable to make the foregoing certifications or require disclosure. The foregoing certifications or signed statement shall be deemed to have been made by the Bidder with full knowledge that they would become a part of the records of the Authority and that the Authority will rely on their truth and accuracy in awarding this Contract. In the event that the Authority should determine at any time prior or subsequent to the award of this Contract that the Bidder has falsely certified as to any material item in the foregoing certifications or has willfully or fraudulently furnished a signed statement which is false in any material respect, or has not fully and accurately represented any circumstance with respect to any item in the foregoing certifications required to be disclosed, the Authority may determine that the Bidder is not a responsible Bidder with respect to its bid on the Contract or with respect to future bids on Authority contracts and may exercise such other remedies as are provided to it by the Contract with respect to these matters. In addition, Bidders are advised that knowingly providing a false certification or statement pursuant hereto may be the basis for prosecution for offering a false instrument

for filing (see e.g. New York Penal Law, Section 175.30 et seq.). Bidders are also advised that the inability to make such certification will not in and of itself disqualify a Bidder, and that in each instance the Authority will evaluate the reasons therefor provided by the Bidder. Under certain circumstances the Bidder may be required as a condition of Contract award to enter into a Monitoring Agreement under which it will be required to take certain specified actions, including compensating an independent Monitor to be selected by the Port Authority, said Monitor to be charged with, among other things, auditing the actions of the Bidder to determine whether its business practices and relationships indicate a level of integrity sufficient to permit it to continue business with the Port Authority.

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

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

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

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

### **4. No Gifts, Gratuities, Offers of Employment, Etc.**

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

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

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

In addition, during the term of this Contract, the Contractor shall not make an offer of employment or use confidential information in a manner proscribed by the Code of Ethics and Financial Disclosure dated April 11, 1996, (a copy of which is available upon request to the Office of the Secretary of the Port Authority).

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

## 5. Conflict of Interest

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

## 6. Definitions

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

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

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

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

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

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

If the solicitation is a Request for Proposal:

Bid - shall mean Proposal;

Bidder - shall mean Proposer;

Bidding - shall mean submitting a Proposal.

In a Contract resulting from the taking of bids:

Bid - shall mean bid;

Bidder - shall mean Bidder;

Bidding - shall mean executing this Contract.

In a Contract resulting from the taking of Proposals:

Bid - shall mean Proposal;

Bidder - shall mean Proposer;

Bidding - shall mean executing this Contract.