

October 30, 2015

**SUBJECT: SELECTION PROCESS FOR THE PERFORMANCE OF EXPERT PROFESSIONAL UNDERWRITING SERVICES FOR THE PORT AUTHORITY OF NEW YORK & NEW JERSEY DEBT OBLIGATIONS ON AN AS-NEEDED” BASIS DURING 2016 - 2018 – SELECTION PROCESS # 43942**

Dear Sir or Madam:

The Port Authority of New York and New Jersey (the “Authority”) is seeking responses (“Response”) to subject Selection Process #43942 for the performance of expert professional underwriting services in supporting both the Authority’s ongoing capital markets program and the refunding of outstanding debt obligations for a three-year period. The senior managing and co-managing underwriter services solicited under this Selection Process will replace all senior managing and co-managing underwriter pools currently in place. The current underwriter pools were awarded in 2014 (non-WTC financings) and 2012 (WTC financings).

It is the Authority’s intention to qualify a pool of firms eligible to serve as Senior Manager, a pool of firms eligible to serve as Co-Manager, and a pool of firms eligible to serve as Selling Group Members, on certain financings during the appointment period. The specific makeup and size of the pools have not been determined. The Authority will structure its financings in the manner that best meets its objectives to issue debt efficiently and cost effectively. At the time of each negotiated financing, the Authority will select firms from the prequalified list(s)/pool(s), as appropriate, to serve as book-running Senior Manager, co-Senior Manager(s), Co-Manager(s), and Selling Group Members. The Authority reserves the right to determine the number of firms selected for each transaction. Firms selected for inclusion in the Senior Manager, Co-Manager, or Selling Group Member pools (each, a “Firm”) are not guaranteed to be chosen for inclusion in the syndicate for any future negotiated Authority debt offerings. The Authority also reserves the right to appoint firms from the Co-Manager pool to serve as a senior managing underwriter or to award transactions outside of the qualified pool of firms, should a firm propose a unique, cost-saving or meritorious idea.

**I. BACKGROUND**

The Authority is an agency of the States of New York and New Jersey (“the States”), created and existing by virtue of the Compact of April 30, 1921, made by and between the 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 States have, from time to time, authorized specific transportation and terminal facilities and facilities of commerce and economic development, and have given the Authority power to borrow money upon its bonds or other obligations, to establish charges for the use of such

facilities and, in connection with specific facilities, to acquire real and personal property by condemnation or the exercise of the right of eminent domain or otherwise.

The Authority raises the necessary funds for the improvement, construction or acquisition of its facilities generally upon the basis of its own credit. The Authority has no power to levy taxes or assessments. The Authority’s obligations are not obligations of the two States or of either of them, and are not guaranteed by the States or by either of them. The revenues of the Authority are derived principally from the tolls, fares, landing and dockage fees, rentals and other charges for the use of, and privileges, at certain of its facilities; other facilities are either non-revenue producing, operate at a deficit or do not generate surplus revenues.

In 2014, the Governors of the States formed a bi-State Special Panel on the Future of the Authority, to review and evaluate reforms on the Authority’s mission, structure, management, operations and overall governance for betterment of the region. The Special Panel released a report which was endorsed by the by the Governors of the States in December 2014. In February 2015, the Board of Commissioners endorsed in concept the six core structural and strategic recommendations of the Special Panel. The Special Panel’s recommendations called for, among other things, the Authority to employ innovative and flexible financing techniques to increase operational flexibility and financing capacity while maintaining the Authority’s high standing in the credit markets. Respondents should consider the recommendations included in the report when responding to this Selection Process and preparing their Response.

For purpose of your analyses, assume the Authority is issuing \$10 billion in bonds for new money and refunding needs through the end of 2018 and that 85% of the new money issuances are tax-exempt, with equal annual issuances. Table 1 includes the Bonds Series eligible for refunding in the next three (3) years:

Table 1. Bond Series Eligible for Refunding (with tax status and call date)

2016	2017	2018
143 <sup>rd</sup> Series (AMT) 4/1/2016	147 <sup>th</sup> Series (AMT) 4/15/2017	150 <sup>th</sup> Series (TAX) 9/15/2018
146 <sup>th</sup> Series (AMT) 12/1/2016	149 <sup>th</sup> Series (TE) 11/15/2017	151 <sup>st</sup> Series (AMT) 3/15/2018
		152 <sup>nd</sup> Series (AMT) 5/1/2018
		153 <sup>rd</sup> Series (TE) 7/15/2018

## **II. RESPONDENT QUALIFICATION REQUIREMENTS**

To be eligible to submit a Response, a Respondent must meet the following qualification requirements:

- A. For Seniors and Co-Managers only, the Firm must have a municipal finance division and have served as an underwriter over the last five (5) years for municipal issuers that are comparable in kind and scope to the Authority.

- B. All Respondents must have a staffed office located in either New York or New Jersey.

### **III. SCOPE OF SERVICES**

The services of each selected Firm(s) to serve as a Senior Manager, Co-Manager or Selling Group Member shall generally consist of, but are not limited to, providing underwriting services supporting both the Authority's ongoing capital markets program and the refunding of outstanding debt. The contemplated services may include, but are not limited to those identified herein. The Firm shall perform all associated, and attendant to, services required hereunder. Compensation for all said services will be negotiated at the time of each transaction. Tasks to be performed by the Firm may include, but shall not be limited to:

#### **A. SERVICES OF THE SENIOR MANAGERS:**

1. Planning and Scheduling the Issuance of Debt Obligations:
  - a. determining the structure of the debt obligations to be issued, including such areas as maturity schedule, serial or term bonds, redemption provisions, etc.;
  - b. preparing financing schedules and calendar of events;
  - c. managing the underwriting process and providing advice on market timing and investor demand.
2. Marketing and Distribution of Debt Obligations:
  - a. providing cost-effective pricing and marketing of debt obligations as required to be issued at the lowest interest rates practical;
  - b. providing support for the debt obligations in the primary and secondary market;
  - c. assisting in the preparation and review of all relevant documents required to implement the issuance of the debt obligations, including the preliminary and final official statements;
  - d. conducting conference calls in connection with the sale of the debt obligations and coordinating information with the syndicate group;
  - e. coordinating information meetings with institutional investors, credit analysts, financial advisors and other public presentations as requested by the Authority;
  - f. preparing pricing memos, discussing market conditions (including comparable transactions and trading levels) and preliminary pricing scales, syndicate rules, syndicate price views and marketing compensation;
  - g. developing broad interest among potential purchasers of the obligations to obtain the lowest possible cost for the debt obligations to be issued;
  - h. committing capital, as required, in underwriting the Authority's debt obligations.
3. Financial Analysis Pertaining to the Debt Obligations as a Component of the Authority's Overall Financing Plans:

- a. preparing cash flows and individual transaction cash flows;
  - b. undertaking certain market-related analysis of various financial products;
  - c. identifying refunding opportunities to reduce interest cost;
  - d. participating in discussions regarding the effect of increased debt costs on the Authority's ratings and capital structure, and assisting the Authority in developing strategic and tactical responses;
  - e. identifying new strategies and innovative financing concepts, which could be utilized by the Authority to reduce borrowing costs and broaden the investor base for distribution of the Authority obligations;
  - f. evaluating the use of appropriate types of credit enhancement, if necessary, and assisting in obtaining such commitments.
4. Reporting and Presentations Pertaining to Debt Obligations:
- a. developing opinions and recommendations and documenting the same for presentation to the Authority's Board of Commissioners and Committee on Finance, and others, as needed;
  - b. preparing a comprehensive "Final Pricing Book" (Pricing Book) within one week after the pricing date of each issue of debt obligations. The Pricing Book shall, at a minimum, include:
    - 1) actual price scale for the debt obligations;
    - 2) actual spread components;
    - 3) details and comparisons to actual recent comparable sales;
    - 4) description of actual market conditions at the time of sale;
    - 5) orders and allotments by Firm;
    - 6) summary of total compensation to all participants in the transaction (broken out by management fee and takedown), including designations by Firms.

**B. SERVICES OF THE CO-MANAGERS:**

1. Coordinate with and assist the Senior Manager in marketing and distribution of debt obligations;
2. Assist the Senior Manager in analyzing market conditions and development of the marketing plan for the debt obligations;
3. Commit capital as required in underwriting Authority debt obligations;
4. Provide support for the debt obligations in the primary and secondary market.

Note: For the purposes of the preceding Senior Manager and Co-Manager tasks, the Firm shall attend meetings, review documents as appropriate, and document services performed and its findings; prepare and conduct presentations; and submit draft and final reports documenting recommendations, etc., as may be required.

### C. SERVICES OF THE SELLING GROUP MEMBERS:

Utilize the Firm's institutional and/or retail sales capabilities to aggressively market bonds in support of the bond pricing and distribution strategy.

Over the course of the engagement, services may be requested that have not been delineated in the above list of services to be provided. No additional compensation will be provided by the Authority for these services, which are considered associated with, or attendant to, the subject matter of this Selection Process.

## IV. INFORMATION AND MATERIALS PROVIDED BY THE AUTHORITY

Each Firm is expected to perform its own analysis of the information provided and publicly available, and to base its submittal on that analysis. Information can be obtained from the following sources:

- the Background section above;
- information on Authority's projects, available at [www.panynj.gov](http://www.panynj.gov);
- The Comprehensive Annual Financial Reports of the Authority which are available at: <http://www.panynj.gov/corporate-informantion/financial-information.html>; and
- Official Statement, The Port Authority of New York and New Jersey Consolidated Bonds, One Hundred Ninety-second Series, One Hundred Ninety-third Series and One Hundred Ninety-fourth Series is available at the Electronic Municipal Market Access (EMMA) website (<http://emma.msrb.org/>)
- Consolidated Bond Resolution and Resolution authorizing Versatile Structure Obligations (Port Authority Versatile Structure Obligations Resolution-Modification), which can be obtained by email request to Ekatherina Carrera at [ecarrera@panynj.gov](mailto:ecarrera@panynj.gov). The e-mail subject line should state the Selection Process number. The body of the e-mail should include your firm's full name, address, contact name, and contact phone number. A copy of the Resolutions will then be emailed to you.
- The report of Special Panel on the Future of the Port Authority is available at: <http://www.panynj.gov/pdf/SpecialPanelReporttotheGovernors.pdf>.

## V. RESPONSE FORMAT REQUIREMENTS

To respond to this Selection Process, the Respondent shall submit a concise Response to the following format requirements:

- A. To be acceptable, your Response shall be no more than **20** pages (single-sided using 12 point or greater font size, with no less than 1" margins) not including the cover letter, Respondent's annual report or resumes. The page 20 page limit will only applied to paragraphs I (excluding resumes), J, K and L in Section VI. The Response pages shall be numbered and bound, or in a 3-ring binder, with "Your Firm Name" and **Selection Process Number 43942** clearly indicated on the outside package and on the Response cover.

- B. Each section of the Response shall be separated with a tab divider that is labeled in accordance with the requirements specified below in Section VI "Submission Requirements."
- C. All Responses must be delivered in sealed envelopes and/or packages. Address the Response to: The Port Authority of New York and New Jersey, 4 World Trade Center, 21st Floor, New York, NY 10007, Attention: Selection Process Custodian. You are required to submit one (1) reproducible original and five (5) copies, along with five (5) USB drives, of your Response for review. In case of conflict, the reproducible original of the Response shall take precedence over material on the USB drive. If your Response is to be hand-delivered, note that only individuals with proper identification (e.g. photo identification) will be permitted access to the Authority's offices. Individuals without proper identification shall be turned away and their packages not accepted. There is extensive security at the World Trade Center Site. You must present a valid government-issued photo ID to enter 4 WTC. Individuals without packages or carrying small packages, envelopes or boxes that can be conveyed by hand or on a hand truck may enter through the lobby. All packages, envelopes and boxes may be subject to additional security screening. There is no parking available at 4 WTC/150 Greenwich Street, and parking in the surrounding area is extremely limited. Express carrier deliveries by commercial vehicles will only be made via vendors approved by Silverstein Properties, the WTC Property Manager, through the Vehicle Security Center (VSC). Please note that use of the U.S. Mail does not guarantee delivery to Authority offices by the above listed due date for submittals. Respondents using the U.S. Mail are advised to allow sufficient delivery time to ensure timely receipt of their Responses. Presently, UPS is the only delivery vendor with approved recurring delivery times. UPS makes deliveries to 4 WTC around 9:30 a.m. each day. Please plan your submission accordingly. As additional express carriers may be approved by Silverstein Properties and scheduled for recurring delivery times with the VSC, this information may be updated. Under certain circumstances, a solicitation may allow for a commercial vehicle to be approved to make a delivery in accordance with the VSC procedures. If applicable, the specific solicitation document will include that information. The Authority assumes no responsibility for delays, including, but not limited to, delays caused by any delivery services, building access procedures, or security requirements.
- D. In each submission to the Authority, including any return address label, information on the USB drive and information on the reproducible original and copies of the Response, the Respondent shall use its **FULL LEGAL NAME WITHOUT ABBREVIATIONS**. Failure to comply with this requirement may lead to delays in contract awards and contract payments, which shall be the responsibility of the Respondent.
- E. Your Response should be received in sufficient time so that the Authority receives them **no later than 2:00 p.m. on December 8, 2015**. The cover of your submittal must be labeled, including the Selection Process Number and the Selection Process title as indicated in the "Subject" above. The Authority assumes no responsibility for delays caused by any delivery services. All Responses shall be irrevocable for 180 days from the date set forth above.

## **VI. SUBMISSION REQUIREMENTS**

To respond to this Selection Process, provide the following information for evaluation:

- A. Include, in the front of your Response, a copy of Attachment A (Agreement on Terms of Discussion) signed by an officer of your company.
- B. Submit a cover letter, on letterhead of your firm and signed by an authorized representative. The cover letter shall provide documentation as to how your firm meets the minimum requirements as stated in Section II, above, highlight the key points of your Response, and indicate if your firm is interested in providing services as Senior Manager, Co-Manager or Selling Group Member. The cover letter shall also include the following: the name, title, address and telephone number of the primary contact for the Response.
- C. Include a completed copy of Attachment B (Company Profile).
- D. Indicate the category(ies) for which your firm is interested in providing services: Senior Manager, Co-Manager or Selling Group Member positions. Firms should indicate if they wish to be considered only for a Co-Manager position or Selling Group member position. Note: firms that wish to apply only for a Co-Manager position should not respond to questions in Section L (Management Approach). Firms that wish to apply only for a Selling Group member position should not respond to Questions in Sections J (Technical Approach) and L (Management Approach).
- E. Include a statement indicating whether the firm is responding as a single entity, or as a joint venture.

If a joint venture submits a Response, all participants in the joint venture shall be bound jointly and severally and each participant shall execute the Response. If a single entity Respondent cannot demonstrate that it meets all of the referenced qualifications, then the single entity Respondent may, with others, form a joint venture and request that the joint venture be deemed to be the Respondent (i.e. members of the joint venture may meet the qualification requirement collectively).

If the Respondent is a joint venture, the joint venture's Response shall contain an executed teaming agreement, or alternatively, if the entities making up the joint venture Respondent have not executed a teaming agreement, the joint venture's Response shall contain a summary of key terms of the anticipated agreement. If the joint venture Respondent is a consortium, partnership or any other form of a joint venture, or an association that is not a legal entity, the Response shall include a letter signed by each member indicating a willingness to accept joint and several liability until the point at which a corporation, limited liability company or other form of legal entity is formed for the purposes of undertaking the agreement.

If the Respondent is a joint venture, references herein to "you," "your," "your firm" may be interpreted to mean the participants of the joint venture.

- F. If the Respondent or any employee, agent or subcontractor of the Respondent may have, or may give the appearance of, a possible conflict of interest, the Respondent shall include in its Response a statement indicating the nature of the conflict. The Authority

reserves the right to disqualify the Respondent if, in its sole discretion, any interest disclosed from any source could create, or give the appearance of, a conflict of interest. The Authority's determination regarding any question(s) of conflict of interest shall be final.

- G. By submitting a Response, your firm shall be deemed to have made the certifications contained in Attachment C (Contractor's Integrity Provisions) unless your firm submits a statement with its Response explaining why any such certification(s) cannot be made. Such a submission shall be submitted in a separate envelope along with your Response, clearly marked "CERTIFICATION STATEMENT."
- H. The Authority is committed to diversity and equal employment opportunities among its contractors, including underwriters. Describe your firm's affirmative action program and activities. Please include this information as an appendix to your response (not subject to the respective page limit) entitled "Affirmative Action Policies." Please provide the total number of employees in your public finance department and include the numbers and percentages of minorities and women employed as officers, associates and paraprofessionals. Please provide this same information with respect to the staff proposed to cover the Authority's account. If your firm is a Port Authority Certified MBE or WBE firm, please indicate so and provide documentation.

I. Staff Qualifications and Experience

- 1. Provide detailed resumes of the individuals in your firm who will be directly assigned to the Authority.
  - a. Describe the specific function each will perform, his/her qualifications to perform said function and the extent to which any such individuals have participated in any of the services referred to in Section K.(Firm Qualifications and Experience).
  - b. Identify subconsultants, if any, and indicate their experience and qualifications.
- 2. Provide your recommendation with regard to assembling an underwriting team best suited to market and sell a tax-exempt and a taxable issuance for the Authority.
- 3. Prepare an organization chart for the Authority's team identifying key individuals, key experience and availability, function, task responsibility and reporting relationships.

J. Technical Approach

- 1. Provide your firm's economic outlook for the next three (3) years, including rate targets for both US Treasuries and Municipal Market Data (MMD) for ten (10) and thirty (30) years.
- 2. Provide your firm's view of the current variable rate market and the applicability of any of the products being introduced into the municipal market to the financing of the Authority's capital costs, as well as other components of the Authority's capital program. Your response should address any potential issues, availability and use of bank credit, negative impacts, or market-based risks that the Authority should be aware of if such products were implemented and methods to mitigate or eliminate these potential impacts.

3. The Authority is anticipating issuing approximately \$10 billion in bonds over the next three (3) years to meet its estimated new money and refunding needs for the period (See Section I. Background). As part of these financings, the Authority would like to explore ideas related to increasing variable rate exposure, increasing call optionality, utilizing subordinated debt and minimizing overall borrowing cost.
  - a. Based on the Authority's debt needs, and in light of your economic outlook and views on the variable rate market, discuss how to best implement a variable rate debt funding program to increase the variable rate exposure in the Authority's debt portfolio.
  - b. Describe any recommendations and innovating financing ideas that could assist the Authority in optimizing its capital structure, maximizing its financing capacity, lowering its cost and mitigating risk. Please discuss your views on the appropriate amount and percentage of variable rate debt for the Authority.
  - c. Provide insight on the reception of the Authority's fixed-rate and variable rate bonds under current market conditions. Please provide your trading desk's anticipated credit spreads to the MMD 'AAA' Index and US Treasuries as of October 31, 2015 and the associated coupon structure. For taxable debt, include credit spreads for non-callable debt and callable debt (both make-whole call and 10-year par call). Comment on factors that could alter these levels.
4. The Authority currently utilizes a mix of short-term and long-term debt, as well as direct investment, to fund its capital projects. Provide your thoughts on the allocation of financing versus direct investment to allow the Authority to maximize its potential for investment in its long-term capital programs.
5. The Authority is currently rated AA- with a stable outlook from Standard & Poor's and Fitch Ratings and Aa3 with a stable outlook from Moody's Investors Service.
  - a. Provide a strategy with specific steps to improve the Authority's ratings overall.
  - b. Indicate what your firm sees as the single biggest credit/marketing challenge for the Authority over the next three years and how best to address these challenges.
  - c. Provide at least one case study demonstrating your firm's ability to provide value-added assistance during the credit/rating process of a comparable issuer.
  - d. Provide any WTC related, airline/aviation, bridge/tunnel/terminals, port, rail (PATH) or other industry specific concerns that you believe could affect the credit and/or marketing of the Authority's bonds.
6. Following the recommendations of the Authority's Special Panel Report "Keeping the Region Moving", the Authority is currently evaluating ways to modernize the Authority's current Bond Resolutions.
  - a. Provide your thoughts and suggestions regarding updating, modernizing and implementing changes to the Authority's Consolidated Bond Resolution. Discuss the specific sections that your firm believes should be updated/modified and any specific changes that your firm suggests as well as the perceived benefits thereof.

- b. Discuss the steps required to implement your suggestions and a proposed timeline to update the Consolidated Bond Resolution.
  - c. Discuss whether the current Versatile Structure Obligation Resolution requires any amendments to address any instruments as proposed in Question 3, Paragraph K, Section V. If so, what specific changes would be required? Also, provide your suggestions regarding the creation of a new subordinated debt lien and how it may benefit the Authority.
  - d. Discuss any potential credit implications related to those suggested changes.
7. Discuss any applicable legislative initiatives or potential changes that could affect the Authority's issuance of bonds and how the Authority should address the impact of those initiatives.

**K. Firm Qualifications and Experience**

1. Firm Information – state the name of your firm, address, telephone number, fax number and the name, title, and e-mail address of the person who will serve as the Authority's primary contact with your firm.
2. Provide a brief description of your firm and its organizational structure, including a complete list of affiliates and business lines in which your firm engages in addition to public finance.
3. Discuss your firm's overall marketing approach and recognized strength(s) (e.g. institutional vs. retail).
  - a. Describe your firm's distribution capabilities. If applicable, identify the number of retail accounts, regional concentration and unique marketing strengths your firm can offer.
  - b. Discuss the differentiating contributions that your firm will make to the distribution of Authority debt in both the primary and secondary markets for the role in which your firm is applying for.
  - c. Based on the Authority's debt needs identified in the Background section, provide a tax-exempt and taxable marketing strategy for the Authority. Discuss the targeted investors for the tax-exempt and taxable debt.
  - d. Discuss how the Authority should build one-on-one relationships with the investment community as well as the steps needed to best market the Authority to investors, both current and new, prior to a bond sale to ensure higher levels of participation.
  - e. Describe your experience with, and approach to, investor presentations.
4. Discuss your firm's contributions assisting the Authority during the past three (3) years including underwriting and sale of the Authority bonds, secondary market support of Authority debt, product ideas and transactions, and any other Responses, ideas, analyses or work you have provided to the Authority, if any. If your firm has previously participated as a member of the Authority's syndicates, discuss your specific contributions to the transactions. A list of your contributions may be included in an appendix as supplemental material to your answer.

5. State your firm's qualifications, knowledge and experience relating to the Authority and other issuers, particularly in the transportation industry, with major capital programs requiring large and frequent debt issues. Discuss specific capabilities your firm has that would add value to the Authority's team.
  - a. Provide information on your firm's expertise in structuring, marketing and selling taxable and tax-exempt long-term debt and short-term debt (including fixed, variable rate and index-based notes).
  - b. Include a chronological listing (not subject to the respective page limit) of municipal negotiated bond transactions for which your firm provided senior-manager or co-manager underwriting services for the period 2012 – present (list the date of issue, issue name, issue size and role of firm). Detail your sales performance, in particular, your orders placed (retail, priority and member), allotments received and/or distributed, and designations.
  - c. Include a listing of the number variable rate issues by type senior-managed by your firm since 2012.
6. Discuss the ownership structure of your firm and your firm's long-term ratings for each year during the period 2012 – present and a description of any events that may have caused any of the rating agencies to change their rating or outlook.
7. Provide the firm's capital structure and leveraging practices, including total capital, equity capital, uncommitted excess net capital and underwriting capacity.
8. Provide an explanation of any short-term financing currently used, including credit lines to support underwritings.
9. Discuss your firm's capital commitment to public finance. Your response should address:
  - a. The amount of uncommitted excess net capital allocated to support public finance operations in each of the years during the period 2012- present. Include the average daily inventory of municipal bonds (tax-exempt fixed rate only) by year during the past three (3) years.
  - b. Briefly discuss examples of transactions and circumstances where your firm used its capital to support the sale and distribution of debt obligations during the period 2012 – present.
  - c. Describe the three (3) largest positions your firm has taken down into inventory during the last year when your firm was senior manager on a transaction. Your response should include the total par amount of the issue, the total amount of unsold debt obligations, the type of debt obligations (Tax supported, Appropriation, Revenue etc.), as well as the amount of debt obligations your firm took into inventory.
  - d. Discuss your firm's organizational commitment to public finance. Have there been any changes in the firm's municipal finance department staffing or staffing policy during the period 2012 – present? If so, discuss how these changes may affect coverage of the Authority. Include the number of staff members assigned to investment banking, underwriting, sales, and trading during this period.

10. Discuss your firm's presence in the State of New York and/or State of New Jersey, including any offices maintained in each state, the number of staff employed in each state and the number of staff covering the Authority who are employed in each state. Include in your discussion how your firm's presence in the State of New York and/or State of New Jersey has changed during the period 2012 – present.
11. Has your firm been removed from any underwriting appointment prior to the expiration of the contract term? If so, describe the circumstances. Note that this requirement is in addition to the requirement in Contractor's Integrity Provisions.
12. Provide a list and description of any proceedings pending or contemplated by any governmental authority against your firm, including but not limited to, any pending or anticipated proceedings or rule or order relating to a violation or alleged violation by your firm of any federal or state statute or regulation pertaining to the underwriting or sale of securities, the provision of investment advisory services or the issuance of securities.
  - a. Provide a list of all sanctions and/or fines imposed on your firm during the last 24 months in connection with any proceeding of the type described in the proceeding sentence.
  - b. Provide a list and description of any pending or anticipated proceedings by private parties against your firm (individually or in the aggregate) that your firm has determined may have a material adverse impact on the current financial status or operations of the firm. Please note that this requirement is in addition to the requirement in Certification of No Investigation.
13. Provide name and contact information for your legal counsel (please include e-mail address).

L. Management Approach

Provide a detailed description of the proposed management approach to be taken for the performance of the required services. Factors addressed in your management approach shall include, but are not limited to the following:

1. Your proposed organizational structure to be responsive to the Authority's needs;
2. Your proposed approach and schedule for keeping the Authority apprised of the project status; and
3. Your proposed approach to ensuring the quality of the work product to be produced.

**VII. SELECTION PROCESS**

Through this qualifications-based selection process, the Authority will be considering all factors that, in its sole judgment, will lead the Authority to a determination that the firm(s) selected will best serve the Authority's interest. The selection process shall take into consideration the following criteria:

A. When evaluating a firm to be considered for the position of Senior Manager:

1. Staff Qualifications and Experience

2. Technical Approach
  3. Firm Qualifications and Experience
  4. Management Approach
- B. When evaluating a firm to be considered as a Co-Manager:
1. Staff Qualifications and Experience
  2. Technical Approach
  3. Firm Qualifications and Experience
- C. When evaluating a firm to be considered as a Selling Group Member:
1. Staff Qualifications and Experience
  2. Firm Qualifications and Experience

## **VIII. INTERVIEWS**

After review of all Response submissions, the Authority may request an interview with your firm. The interview should include the material contained in your Response and will include a discussion with Authority staff. Questions that the Authority would like addressed during the interview may be provided in advance. Interviews will last approximately sixty (60) minutes, and your firm should anticipate devoting approximately thirty (30) minutes to questions posed by Authority staff. Staff attending the interview on behalf of your firm shall be led by the proposed Project Manager, who may be supported by no more than four (4) other senior staff members also proposed to work on this project. Notification of interview scheduling is made by email. Interviews will likely take place at the Authority's Manhattan Office. Firms must be prepared to appear for an interview on short notice. Provide the name and email address of the person who should be contacted for interview scheduling as well as an alternate in the event that person is unavailable.

## **IX. ADDITIONAL INFORMATION**

If your firm is selected for the underwriter pool as a Senior Manager or Co-Manager, the firm and each employee assigned to work under the Agreement may be required to sign a Non-Disclosure Agreement.

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

Successful Respondents will receive a letter from the Authority notifying the Firm that it has been selected for the pool and noting whether the Firm has been selected as a Senior Manager, Co-Manager or Selling Group Member.

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

Should you have any questions, please contact Ekatherina Carrera by e-mail at [ECarrera@panynj.gov](mailto:ECarrera@panynj.gov). All such correspondence must have your name, title, company, mailing address, telephone number and state Selection Process Number 43942 in the subject line. No other person is authorized to make interpretations of this Selection Process or to suggest any course of action or manner of response other than the Manager, Construction Procurements. All questions must be received at least five (5) working days prior to the Selection Process due date. Neither the undersigned nor any other employee of the Authority is authorized to interpret the provisions of this Selection Process or accompanying documents or give additional information as to their requirements. If interpretation or additional information is required, it will be communicated by written addendum issued by the undersigned and such writing shall form a part of this Selection Process, or the accompanying documents, as appropriate. You will not be entitled for any compensation except under an agreement for performance of service signed on behalf of the Authority, and you shall not be entitled to compensation for preparation of your Response or oral presentation.

No rights accrue to any Respondent except under a duly authorized agreement for the performance of specified services. The Authority reserves the unqualified right, in its sole and absolute discretion, to reject all Responses, to undertake discussions and modifications with one or more qualified firms and to proceed with that Response or modified Response, if any, which in its judgment will, under all the circumstances, best serve the public interest. The Authority reserves the right to solicit a new, or additional, pool at any point in time.

Information submitted to the Authority orally or in writing in response to this Selection Process or thereafter shall not be considered as given in confidence and shall be the property of the Authority and may be used or disclosed by the Authority at any time without compensation or other obligation. The Authority has adopted the Freedom of Information Code, located on the Authority's website at <http://www.panynj.gov/corporate-information/pdf/foi-code.pdf> (the "**Freedom of Information Code**"). Disclosure by the Authority of any information relating to this Selection Process, including information in a Response, whether pursuant to a request under any applicable law of the States of New York or New Jersey or otherwise, is subject to the Agreement on Terms of Discussion (Attachment A) and the Freedom of Information Code, as may be amended.

The Authority may consult references familiar with your organization regarding your prior projects, financial resources and other information related to your Response.

The Authority does not guarantee the accuracy of the information furnished in this Selection Process. Firms are responsible for all conclusions that they may draw therefrom.

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

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

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

Sincerely,

David Gutiérrez, CPPO  
Manager Construction Procurements  
Procurement Department

Attachments

**ATTACHMENT A**

**AGREEMENT ON TERMS OF DISCUSSION**

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

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

\_\_\_\_\_  
(Company)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Date)

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

**ATTACHMENT B**  
**COMPANY PROFILE**

**SELECTION PROCESS FOR THE PERFORMANCE OF EXPERT PROFESSIONAL  
UNDERWRITING SERVICES FOR THE PORT AUTHORITY OF NEW YORK & NEW  
JERSEY DEBT OBLIGATIONS ON AN AS-NEEDED BASIS DURING 2016 - 2018 –  
SELECTION PROCESS # 43942**

1. Company Name (print or type):

\_\_\_\_\_

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

\_\_\_\_\_  
\_\_\_\_\_

3. Business Telephone Number: \_\_\_\_\_

4. Business Fax Number: \_\_\_\_\_

5. Firm website: \_\_\_\_\_

6. Federal Employer Identification Number (EIN): \_\_\_\_\_

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

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

\_\_\_\_\_  
\_\_\_\_\_

9. Officer or Principal of Firm and Title:

\_\_\_\_\_

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

\_\_\_\_\_  
\_\_\_\_\_

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

If yes, please attach a copy of your **Port Authority** certification to this profile.

If your firm is an M/WBE not currently certified by The Port Authority of New York and New Jersey, see the Authority's web site – <http://www.panynj.gov/business-opportunities/supplier-diversity.html>, for information related to applying for such certification.

## **ATTACHMENT C INTEGRITY PROVISIONS**

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

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

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

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

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

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

B. the prices quoted in its proposal have not been and will not be knowingly disclosed directly or indirectly by the Consultant prior to the official opening of such proposal to any other consultant or to any competitor;

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

D. this organization has not made any offers or agreements or taken any other action with respect to any Authority employee or former employee or immediate family member of either which would constitute a breach of ethical standards under the Code of Ethics dated March 11, 2014, or as may be revised, (a copy of which is available upon request to the Authority), nor does this organization have any knowledge of any act on the part of an Authority employee or former Authority employee relating either directly or indirectly to this organization which constitutes a breach of the ethical standards set forth in said Code;

E. no person or selling agency other than a bona fide employee or bona fide established commercial or selling agency maintained by the Consultant for the purpose of securing business, has been employed or retained by the Consultant to solicit or secure this Agreement on the understanding that a commission, percentage, brokerage, contingent, or other fee would be paid to such person or selling agency;

F. the Consultant has not offered, promised or given, demanded or accepted, any undue advantage, directly or indirectly, to or from a public official or employee, political candidate, party or party official, or any private sector employee (including a person who directs or works for a private sector enterprise in any capacity), in order to obtain, retain, or direct business or to secure any other improper advantage in connection with this Agreement; and

G. no person or organization has been retained, employed or designated on behalf of the Consultant to impact any Authority determination with respect to (i) the solicitation, evaluation or award of this Agreement; or (ii) the preparation of specifications or request for submissions in connection with this Agreement.

The certifications in this Section and the Section entitled “Certification of No Investigation (Criminal or Civil Anti-trust), Indictment, Conviction, Debarment Suspension, Disqualification and Disclosure of Other Information” shall be deemed to be made by the Consultant as follows:

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

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

Moreover, the certifications in this Section and the Section entitled “Certification of No Investigation (Criminal or Civil Anti-trust), Indictment, Conviction, Debarment Suspension, Disqualification and Disclosure of Other Information”, if made by a corporate Consultant, shall be deemed to have been authorized by the Board of Directors of the Consultant, and such authorization shall be deemed to include the signing and submission of the proposal and the inclusion therein of such certification as the act and deed of the corporation.

In any case where the Consultant cannot make the certifications in this Section and the Section entitled "Certification of No Investigation (Criminal or Civil Anti-trust), Indictment, Conviction, Debarment Suspension, Disqualification and Disclosure of Other Information", the Consultant shall so state and shall furnish with the signed proposal a signed statement, which sets forth in detail the reasons therefor. If the Consultant is uncertain as to whether it can make the foregoing certifications, it shall so indicate in a signed statement furnished with its proposal, setting forth in such statement the reasons for its uncertainty. With respect to the foregoing certification in paragraph, if the Consultant cannot make the certification, it shall provide, in writing, with the signed proposal: (i) a list of the name(s), address(es), telephone number(s), and place(s) of principal employment of each such individual or organization; and (ii) a statement as to whether such individual or organization has a "financial interest" in this Agreement, as described in the Procurement Disclosure policy of the Authority (a copy of which is available upon request to the Chief Procurement Officer of the Authority). Such disclosure is to be updated, as necessary, up to the time of award of this Agreement. As a result of such disclosure, the Authority shall take appropriate action up to and including a finding of non-responsibility.

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

Notwithstanding that the Consultant may be able to make the certifications in this Section and the Section entitled "Certification of No Investigation (Criminal or Civil Anti-trust), Indictment, Conviction, Debarment Suspension, Disqualification and Disclosure of Other Information" at the time the proposal is submitted, the Consultant shall immediately notify the Authority in writing during the period of irrevocability of proposals on this Agreement or any extension of such period, or during the term of this Agreement, of any change of circumstances which might under this clause make it unable to make the foregoing certifications or require disclosure. The foregoing certifications or signed statement shall be deemed to have been made by the Consultant with full knowledge that they would become a part of the records of the Authority and that the Authority will rely on their truth and accuracy in awarding this Agreement. In the event that the Authority should determine at any time prior or subsequent to the award of this Agreement that the Consultant has falsely certified as to any material item in the foregoing certifications or has willfully or fraudulently furnished a signed statement which is false in any material respect, or has not fully and accurately represented any circumstance with respect to any item in the foregoing certifications required to be disclosed, the Authority may determine that the Consultant is not a responsible Consultant with respect to its proposal on the Agreement or with respect to future proposals on Authority agreements and may exercise such other remedies as are provided to it by the Agreement with respect to these matters. In addition, Consultants are advised that knowingly providing a false certification or statement pursuant hereto may be the basis for prosecution for offering a false instrument for filing (see, e.g. New York Penal Law, Section 175.30 et seq.). Consultants are also advised that the inability to make such certification will not in and of itself disqualify a Consultant, and that in each instance the Authority will evaluate the reasons therefor provided by the Consultant.

Under certain circumstances, the Consultant may be required as a condition of this Agreement award to enter into a Monitoring Agreement under which it will be required to take certain specified actions, including compensating an independent Monitor to be selected by the Authority. Said Monitor shall be charged with, among other things, auditing the actions of the

Consultant to determine whether its business practices and relationships indicate a level of integrity sufficient to permit it to continue business with the Authority.

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

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

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

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

### 4. CONSULTANT RESPONSIBILITY, SUSPENSION OF WORK AND TERMINATION

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

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

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

## 5. NO GIFTS, GRATUITIES, OFFERS OF EMPLOYMENT, ETC.

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

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

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

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

In addition, during the term of this Agreement, the Consultant shall not make an offer of employment or use confidential information in a manner proscribed by the Code of Ethics and Financial Disclosure dated March 11, 2014, or as may be revised, (a copy of which is available upon request to the Office of the Secretary of the Authority). Without the express written approval of the Chief Engineer, you shall keep confidential, and shall require your employees, your subconsultants, and your subconsultant’s employees to keep confidential, a) all information disclosed by the Authority or its consultants to you or b) developed by you or your subconsultants in the performance of services hereunder. Disclosure of any such information shall constitute a material breach of the Agreement.

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

## 6. CONFLICT OF INTEREST

During the term of this Agreement, the Consultant shall not participate in any way in the preparation, negotiation or award of any agreement (other than an agreement for its own services to the Authority) to which it is contemplated the Authority may become a party, or participate in any way in the review or resolution of a claim in connection with such an agreement if the

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

## 7. DEFINITIONS

As used in sections 1 through 6 above, the following terms shall mean:

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

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

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

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

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