

REQUEST FOR QUALIFICATIONS
FOR THE
JFK AIRPORT BERGEN ELECTRICAL SUBSTATION PROJECT
THROUGH A
DESIGN-BUILD AGREEMENT

NOVEMBER 12, 2019

THE PORT AUTHORITY OF NEW YORK & NEW JERSEY
4 WORLD TRADE CENTER | 150 GREENWICH STREET

RFQ TITLE	<p>The title of this RFQ is:</p> <p>Request for Qualifications for the JFK Airport Bergen Electrical Substation Project through a Design-Build Agreement</p> <p>RFQ # 59557</p> <p>Respondents should reference the RFQ # in all correspondence.</p>
CONTACT PERSON	<p>The Contact Person for this RFQ is:</p> <p>Allison Agliardo E-Mail: aagliardo@panynj.gov</p>
RESTRICTION ON COMMUNICATION	<p>A restricted period is currently in effect for this procurement and will remain in effect until Port Authority Board authorization of the Design-Build Agreement, as further described in Section 3.2. Respondents are prohibited from contact related to this procurement with any Port Authority employee, Project Advisor or Commissioner other than the designated Contact Person listed above.</p>
SOQ DUE DATE	<p>Before 2 p.m. Eastern Standard Time on December 12, 2019.</p>
SOQ SUBMITTAL LOCATION	<p>The SOQ Submittal Location is:</p> <p>Procurement Department The Port Authority of New York and New Jersey 4 World Trade Center, 21st Floor 150 Greenwich Street New York, NY 10007 Attention: In-Take Custodian Re: RFQ for JFK Bergen Electrical Substation Project</p>

TABLE OF CONTENTS

1.	INVITATION TO RESPOND	1
1.1	The Opportunity.....	1
1.2	Intent to Respond	1
1.3	The Respondent.....	1
1.4	Farmers Project.....	2
2.	THE PROCUREMENT PROCESS.....	3
2.1	Summary of the Procurement Process.....	3
2.2	Procurement Schedule.....	3
2.3	Request for Qualifications (RFQ) and Short-Listing	3
2.4	Request for Proposals	4
2.5	Evaluation of Proposals	4
2.6	Best Value Determination.....	4
2.7	Proposal Stipend	5
2.8	DBA Key Commercial Terms	5
3.	INSTRUCTIONS TO RESPONDENTS	6
3.1	Contact Person.....	6
3.2	Rules of Contact.....	6
3.3	Questions and Clarifications.....	7
3.4	Project Advisors.....	7
3.5	Conflicts of Interest.....	7
3.6	Amendments to the RFQ.....	8
3.7	SOQ Due Date.....	8
3.8	SOQ Submission Location.....	8
3.9	Costs and Expenses of Respondent.....	9
3.10	Respondent Organizational Requirements.....	9
4.	EVALUATION OF SOQS	11
4.1	Evaluation Objectives	11
4.2	SOQ Evaluation.....	11
4.3	Pass/Fail Evaluation Criteria.....	12
4.4	Evaluation Criteria	12
4.5	Scoring and Ranking of the SOQs.....	13
4.6	Request for Clarification.....	14
4.7	Respondent Interviews.....	14
5.	RETAINED RIGHTS	15
6.	DEFINITIONS	17

APPENDICES

- Appendix A Project Data Sheet
- Appendix B Summary of DBA Key Commercial Terms
- Appendix C SOQ Template

1. INVITATION TO RESPOND

1.1 The Opportunity

Through this Request for Qualifications (“**RFQ**”), we are seeking Statements of Qualifications (“**SOQs**”) from Respondents who are qualified and prepared in all respects to perform the complete design, construction, commissioning and other identified activities for the Project described in the Project Data Sheet (Appendix A). We encourage potential Respondents to this RFQ to thoroughly review the Project Data Sheet to determine whether this opportunity aligns with their past project experience, current and anticipated workload, bonding and financial capacity, and overall business model.

This RFQ is the first step of a two-step Best Value procurement process. Our issuance of the RFP to Shortlisted Respondents commences the second step. At the conclusion of the RFP process, we will seek authorization to enter into a Design-Build Agreement (“**DBA**”) with the Preferred Proposer (“**Design-Builder**”) for the delivery of the Project. The DBA will set out the rights and obligations of the parties for the performance of the Project’s Work. As full consideration to the Design-Builder for the full and complete performance of the Work by a date certain, we will pay, and the Design-Builder will be expected to accept, a firm, fixed-price, lump sum equal to the price set forth in the Design-Builder’s price proposal in response to the RFP.

1.2 Intent to Respond

As soon as possible after our issuance of this RFQ, we encourage potential Respondents to notify the Contact Person via e-mail of their intent to respond to this RFQ in order to receive important updates regarding the procurement process. The potential Respondent should provide the Contact Person with the following information: (i) an affirmative statement of intent to (or not to) respond; (ii) contact name and title, (iii) firm name and location, including mailing address, (iv) contact phone number, and e-mail address.

1.3 The Respondent

A Respondent to this RFQ must be controlled or managed by one or more Principal Participants. For purposes of this procurement, none of the Principal Participants, Lead Contractors, Lead Designers or Key Personnel may be on another Respondent team or otherwise participate in another Respondent’s SOQ; however, any other Subcontractors (including Key Subcontractors, providers and advisors, such as those providing financial, insurance, legal, and bonding services, and as otherwise expressly permitted by the Port Authority), are not prohibited from being on more than one Respondent, provided such Person satisfies the requirements in Section 3.2.

1.4 Farmers Project

Potential Respondents to this RFQ should note that:

- (i) we may commence a separate procurement process in 2020 for the design and construction of a new Farmers Substation at John F. Kennedy Airport and the demolition of the existing Farmers Substation (the “**Farmers Project**”);
- (ii) the Port Authority anticipates that the Farmers Project will be of similar location, scope, size and complexity to the Project;
- (iii) the Port Authority may choose to issue a new RFQ for the Farmers Project; however, where the Port Authority has informed in writing Shortlisted Respondents to this RFQ that they are also eligible to submit proposals on the Farmers Project, such Respondents will not be required to resubmit an SOQ for the Farmers Project and will be eligible to submit proposals in connection with any Farmers Project RFP; and
- (iv) where no separate RFQ is issued for the Farmers Project, Shortlisted Respondents may also be automatically deemed eligible to submit proposals on the Farmers Project, as determined by the Port Authority, in its sole discretion. The Port Authority, in its discretion, will notify Shortlisted Proposers of such determination in writing.

2. THE PROCUREMENT PROCESS

2.1 Summary of the Procurement Process

Our overall procurement strategy for the Project includes the following steps:

- Notice of Intent published for industry outreach
- Issuance of the RFQ
- Short-Listing of the most qualified Respondents
- RFP issued to Shortlisted-Respondents
- Project Site Tour
- Confidential collaborative dialogue meetings with Proposers
- Proposers' submittal of Proposals
- Port Authority evaluation of Proposals
- Selection of the Preferred Proposer
- Finalization of the Design-Build Agreement with the Preferred Proposer
- Authorization and execution of the Design-Build Agreement

2.2 Procurement Schedule

The anticipated Procurement Schedule for the Project is as follows:

Activity	Date
RFQ Phase	
Notice of Intent published	October 4, 2019
RFQ documents issued publicly	November 12, 2019
Deadline for Respondent Questions	December 9, 2019
SOQ Due Date	2:00 PM EST on December 12, 2019
Short-List Notified	January 2020
RFP Phase	
Access to Data Room Granted	January 2020
RFP Issued to Proposers (Short-List Only)	February 2020
Project Site Visit	February 2020
One or more Collaborative Dialogue Meetings with each Proposers	March – June, 2020
Proposal Due Date	June 2020
Authorization	September 2020
Agreement Date – Notice to Proceed	October 2020

2.3 Request for Qualifications and Short-Listing

This RFQ is the first step in the procurement process for the selection of a Design-Builder to perform the Work for the Project. The purpose of this RFQ is to allow us to determine, based on our review and evaluation of SOQs, a Short-List of up to four of the most highly qualified Respondents to participate in the RFP phase. We will notify each Respondent officially in

writing via e-mail whether it has been selected for the Short-List. We will post the Short-List on our web site after we have notified all Shortlisted Respondents.

2.4 Request for Proposals

During the second phase of the procurement, we will issue the RFP to Shortlisted Respondents (referred to as “**Proposers**” during the RFP phase) for review and comment by Proposers. The RFP will specify the requirements for submission of a technical proposal and a price proposal from each Proposer. We intend to host one or more commercially confidential collaborative dialogue meetings with Proposers to discuss commercial, legal, and technical issues. We may also discuss during these meetings any alternative technical concepts submitted by Proposers.

2.5 Evaluation of Proposals

As part of the RFP process, Proposers will be required to submit Proposals for our evaluation. We will first evaluate the Proposals for compliance with the RFP requirements and then evaluate all compliant Proposals using the RFP evaluation criteria and selection methodology that will be included in the RFP. The Port Authority plans to include, at a minimum, the following evaluation criteria and selection methodology to assess Proposals at the RFP phase of the procurement:

- A Proposer’s approach to meeting the Project’s goals, objectives, performance criteria technical requirements
- Proposed Project baseline schedule
- Any material changes to the Proposer’s team or financial capacity
- A Proposer’s quality control and management plans
- Proposer preliminary Minority and Women-Owned Business Enterprise utilization plan
- Overall technical merit of the Proposer’s technical proposal
- The proposed price relative to the technical solution offered
- Other evaluation factors as we may determine and specified in the RFP.

With respect to our assessment of the Proposer’s financial capacity, our assessment will focus on whether the Proposer has experienced a decline in financial strength during the period after Short-Listing of Respondents and the submittal of Proposals.

2.6 Best Value Determination

We will evaluate each Proposal to determine which Proposal is most advantageous to the Port Authority by evaluating and comparing factors in addition to cost or price (“**Best Value**”).

2.7 Proposal Stipend

At the conclusion of the RFP process, we intend to offer a stipend to Proposers who do not enter into the DBA. In order to receive a stipend, a Proposer must have submitted a compliant Proposal in response to the RFP and entered into a stipend agreement with the Port Authority. The Proposer we enter into the DBA with will not be eligible for the stipend payment. We will provide details and a form of stipend agreement as an exhibit to the RFP.

2.8 DBA Key Commercial Terms

We have attached a Summary of the DBA's Key Commercial Terms (Appendix B), solely for preliminary informational purposes, and without any binding or legal effect on the Port Authority, a summary table of key terms and provisions that the Port Authority may include as part of the DBA to be attached to the RFP. All terms, conditions, concepts and provisions are subject to change, in the Port Authority's sole discretion, at anytime during this procurement process.

3. INSTRUCTIONS TO RESPONDENTS

3.1 Contact Person

The Port Authority's "**Contact Person**" for this procurement process is:

Allison Agliardo
Procurement Department
The Port Authority of New York & New Jersey
4 World Trade Center, 21st Floor
150 Greenwich Street
New York, NY 10007
E-mail: aagliardo@panynj.gov

The Contact Person is the Port Authority's and the Respondent's single-point of contact and source of information for this procurement.

3.2 Rules of Contact

The following rules of contact apply during the procurement process, which commenced upon initial issuance of this RFQ, and will be completed with the execution of the DBA. The rules are designed to promote a fair and unbiased procurement process. "Contact" includes any form of communication.

The specific rules of contact include:

- (a) After the deadline for submission of SOQs, neither a Respondent nor any member of its Respondent Team may communicate with another Respondent or members of another Respondent's team about the procurement for the Project, the Project or the Proposals. A Respondent may communicate with any subcontractor that is not a Principal Participant, Lead Contractor, Lead Designer of any other Respondent, provided that such Respondent has obtained (in advance of any such communication) a written certification from the subcontractor that the subcontractor will not act as a conduit of information between the teams and is not a Principal Participant, Lead Contractor, Lead Designer of any Respondent team. Respondents must provide the Contact Person with all required written certifications received from its subcontractors at time of SOQ submission.
- (b) Unless we permit otherwise, contact between each Respondent and the Port Authority (questions and responses to questions) must only be through the Contact Person through written e-mail.
- (c) The Respondent's contacts with us must only be made through the Respondent's Designated Representative, who is authorized to bind the Respondent.
- (d) Any contact by a Respondent that we determine to be improper may result in disqualification of the Respondent.

- (e) Neither (1) any oral communication, or (2) any other information or contact that occurs outside the official communication process specified in this RFQ, will modify the terms of this RFQ, unless confirmed in writing by the Contact Person.
- (f) Neither a Respondent nor its agents may contact any Federal or State official, or Stakeholder staff regarding the Project. Stakeholders include any Federal or State agency involved with the Project, or otherwise having jurisdiction over the Project, as well as any additional Stakeholders identified in the Project Data Sheet. If during the RFP phase a Respondent wishes to communicate with a Stakeholder they may only do so through us.

3.3 Questions and Clarifications

Respondents may make inquiries regarding this RFQ only by submitting questions or requests for clarification to the Contact Person by e-mail no later than the date and time set out in the Procurement Schedule. Questions submitted to anyone other than the Contact Person or by any means other than e-mail will not be answered. Any Respondent that has questions as to the meaning of any part of this RFQ or the Project or who believes that the RFQ contains any error, inconsistency, ambiguity, or omission, must submit its concern, in writing, to the Contact Person.

We may provide all questions or request for clarification submitted by potential Respondents, without expressly identifying the originator, along with our answers, through our procurement webpage. Any oral or written response we provide in connection with this RFQ will neither be binding on us nor will it change, modify, amend or waive the requirements of this RFQ in any way. Potential Respondents must not rely on any response provided other than an addendum.

3.4 Project Advisors

We have retained a team of Project Advisors under exclusivity arrangements to assist us in the procurement process and the delivery of the Project. Our Project Advisors are not eligible to assist or participate on a Respondent team. Moreover, our Project Advisors are not available to provide any services or information to a Respondent on the Project without our prior written approval. Respondents should refer to the Project Data Sheet for a list of our current Project Advisors.

3.5 Conflicts of Interest

If a Respondent, or any member of the Respondent Team has or may have a possible Conflict of Interest related to the Project, or whose participation in this procurement may give the appearance of a possible Conflict of Interest, the Respondent must include in its SOQ Transmittal Letter, a statement detailing the nature of the conflict. We reserve the right to disqualify the Respondent in its entirety if, in our discretion, any interest disclosed from the

Respondent, or any other source, creates a Conflict of Interest or gives the appearance of a Conflict of Interest. Our determination regarding a Respondent's Conflict of Interest will be considered final.

3.6 Amendments to the RFQ

If necessary, we will issue addenda to amend conditions or requirements of this RFQ. We will disseminate any addenda to those firms who have expressed their intent to respond to this RFQ, and by posting on our procurement webpage. Respondents are advised to visit our website regularly to check for addenda. We will post the final addendum on our website not later than seven calendar days prior to the SOQ Due Date. If an addendum is issued within seven days of the SOQ Due Date, and the addendum modifies any of the submittal requirements under this RFQ, then we will revise the SOQ Due Date to allow for additional time for Respondents to consider the addendum and submit their SOQs.

We anticipate we may also use our website to present general market-related inquiries and to receive replies to these inquiries from industry practitioners. These general questions-and-answers will not form part of the SOQ process for the Project, and any replies we receive will not be included within the SOQ evaluation for any Respondent.

3.7 SOQ Due Date

We must receive SOQs no later than the date and time set forth in the Procurement Schedule ("**SOQ Due Date**"). Respondents must deliver their SOQs by hand or courier to the SOQ Submission Location identified in Section 3.8 below. We will not accept SOQs sent by facsimile, electronic mail, or other telegraphic means. It is the sole responsibility of each Respondent to make sure that its SOQ is delivered to us no later than the SOQ Due Date. We will not accept any SOQs received after the SOQ Due Date. We may extend the SOQ Due Date for any period we deem appropriate to ensure a competitive and fair procurement process.

3.8 SOQ Submission Location

We will not consider a SOQ complete until we receive all hard copies and the electronic copy of the SOQ. We will not consider any SOQs received after the SOQ Due Date. We will return any Respondent SOQ received after the SOQ Due Date unopened.

SOQs must be addressed and delivered to:

Procurement Department
The Port Authority of New York and New Jersey
4 World Trade Center, 21st Floor
150 Greenwich Street
New York, NY 10007
Attention: RFP Custodian

Note that only individuals with proper identification (e.g. photo identification) will be permitted access to our offices. Individuals without proper identification will be turned away and their packages not accepted. There is extensive security at the World Trade Center Site. The Respondent must present a valid government-issued photo ID to enter 4 World Trade Center. 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 may only be made via vendors approved by Silverstein Properties, the World Trade Center property manager, through the Vehicle Security Center. Please note that use of the U.S. Mail does not guarantee delivery to our offices by the above-listed deadline for submittals. Respondents using the U.S. Mail are advised to allow enough delivery time to ensure timely receipt of their SOQs. Presently, UPS is the only delivery vendor with approved recurring delivery times. UPS makes deliveries to 4 World Trade Center around 9:30 A.M. EST each day. The Respondent should please plan its submission accordingly. As additional express carriers may be approved by Silverstein Properties and scheduled for recurring delivery times with the Vehicle Security Center, this information may be updated. We assume no responsibility for delays, including delays by any delivery service, building access procedure, or security requirement.

3.9 Costs and Expenses of Respondent

We accept no liability for the costs and expenses incurred by the Respondents in responding to this RFQ, responses to clarification requests and discussion meetings, and resubmittals, and any other activities included as part of this procurement process. Each Respondent that enters into the procurement process must prepare the required materials and submittals at its own expense and with the express understanding that they cannot make any claims whatsoever for reimbursement from us for the costs and expenses associated with the process, including, but not limited to, costs of preparation of the SOQ, loss of anticipated profits, loss of opportunity or for any other loss, cost or expense.

3.10 Respondent Organizational Requirements

After the SOQ Due Date, no changes will be permitted to a Respondent's Key Personnel, Key Subcontractors, Lead Contractors, Lead Designers and Principal Participants except for limited reasons and good cause, all of which are subject to our express written approval. As a result, Key Personnel, Key Subcontractors, Lead Contractors, Lead Designers and Principal Participants identified in the SOQ must be carried forward to the RFP phase and to the DBA. For this reason, the Respondent should carefully consider the make-up of its Respondent Team prior to submitting its SOQ, to reduce the likelihood

of any request for a team member change during the RFP phase and throughout the term of the DBA. Our approval to any change request may be granted or withheld in our sole discretion.

4. EVALUATION OF SOQS

4.1 Evaluation Objectives

The objective of the RFQ phase of the procurement is to create a Short-List of the most highly qualified Respondents who possess the capability (technical, financial, management), capacity and experience necessary to successfully deliver the Project. To accomplish this objective, we have identified the following evaluation objectives to help guide us when evaluating SOQs.

These evaluation objectives include identifying Respondents who:

- (a) Are or will be legally established to submit a Proposal and execute the DBA to complete the Project; and who possess all required professional licenses;
- (b) Can manage all aspects of the Project's Work in a satisfactory, timely, and effective manner, and who can successfully integrate the various parts of its organization, and coordinate with the Port Authority's Project team in a cooperative and functional manner;
- (c) Possess demonstrated experience and expertise, and a record of producing satisfactory work on projects of similar size, complexity, challenges and functionality as this Project;
- (d) Have a record of meeting MBE/WBE participation requirements;
- (e) Demonstrate a knowledge and understanding of the specific management, technical and maintenance issues and risks associated with the Project; and
- (f) Can demonstrate an understanding of how the design-build process and the Respondent's organization will contribute to the success of the Project to meet the Project Goals, and how the Respondent's understanding of the sharing of risks, benefits and responsibilities associated with design-build contracts will ensure success for the Project.

4.2 SOQ Evaluation

We will review each SOQ to ensure responsiveness to the requirements of this RFQ. We may reject any SOQ that does not include all the required elements completed in full. Respondents are advised that we reserve the right to conduct an independent investigation of any information, including prior experience, identified in a SOQ by contacting project references, accessing public information, contacting independent parties, or any other means. Respondent's score may be negatively impacted by our inability to contact and verify references.

4.3 Pass/Fail Evaluation Criteria

Prior to our review of the Respondent's full SOQ, we will evaluate each SOQ based on the following Pass/Fail Evaluation Criteria:

- (a) **Responsiveness:** The SOQ does not deviate from the RFQ requirements in any material respect.
- (b) **Legal:** The Respondent has presented evidence showing its organization has the legal ability to enter into the DBA and perform the Work to design and build the Project, and comply with the applicable licensing requirements.
- (c) **Financial:** The Respondent has demonstrated its ability to provide required bonds, insurance, and acceptable guarantees, and to meet other financial requirements of undertaking and completing the Work, including the ability to satisfy any contingent liabilities or obligations under the DBA.
- (d) **Vendor Responsibility:** The Respondent has demonstrated that it has no integrity or performance issues that could adversely impact its ability to advance to the RFP phase and to deliver the Project under the DBA.

If a Respondent satisfies all the Pass/Fail evaluation criteria, we will further evaluate the SOQ using the Evaluation Criteria detailed in Section 4.4. If a SOQ does not meet a pass/fail criterion, we may rate the SOQ as "unacceptable" and discontinue our review of the SOQ. We may allow certain deficiencies in a SOQ relating to the pass/fail criteria and submitted materials to be corrected through clarifications, but we are under no obligation to do so.

4.4 Evaluation Criteria

We will evaluate each SOQ that has satisfied the Pass/Fail Evaluation Criteria in Section 4.3 above, against the following Evaluation Criteria:

- (a) **Respondent Team Members' Experience:**
 - (i) Experience and past performance on projects completed in the last ten years; but we will give more weight to Similar Projects and to projects that have been completed or under construction within the last five years
 - (ii) Experience in design-build and other alternative project delivery methods
 - (iii) Experience with preparing and implementing quality control and quality assurance plans and procedures on design-build projects
 - (iv) Record of collaboration and coordination with governmental entities and key stakeholders on Similar Projects and the Stakeholders identified specifically for this Project

- (v) Experience on design-build projects
 - (vi) Past performance and experience working with the Port Authority
 - (vii) Record of successfully implementing construction safety programs on Similar Projects and job sites (as demonstrated by the experience modification rate in each of the last three years) and construction safety records accumulated
 - (viii) Record of meeting or exceeding MWBE/DBE participation goals generally and on Similar Projects
- (b) **Key Personnel:**
- (i) The extent proposed Key Personnel meet or exceed the qualifications set forth in SOQ Template (Appendix C)
 - (ii) Proposed Key Personnel experience and performance on Similar Projects
- (c) **Project Understanding and Approach:**
- (i) Respondent's proposed organization and project team structure, including Key Personnel, for appropriateness for the successful performance of the Work required to deliver the Project
 - (ii) Planned strategy for resourcing (material and people) the Project
 - (iii) Work to be self-performed by the Principal Participants vs. Work to be subcontracted
 - (iv) Proposed staffing and experience of Respondent Team members working together successfully as an integrated team on ongoing or past projects
 - (v) Respondent's demonstrated understanding of the Project scope and Project Goals, and how the Respondent intends to ensure the successful delivery of the Project
 - (vi) Based on the information contained in the Project Data Sheet, and the Respondent's experience on Similar Projects, the Respondent's identification of, and proposed approach to managing the Project's risks, including proposed risk mitigation measures, regardless of who owns the risk

4.5 Scoring and Ranking of the SOQs

We will evaluate and rank each responsive SOQ by evaluating the SOQ against the Evaluation Criteria described in Section 4.4. For purposes of our scoring, the Evaluation Criteria are listed below in descending order of importance:

- (a) Respondent Team Members' Experience and Past Performance

- (b) Qualifications and Experience of Proposed Key Personnel
- (c) Project Understanding and Approach

Sub-criteria identified for any Evaluation Criteria are not listed in any order of importance, and Respondents are on notice that some sub-criteria may be given substantially more weight relative to other sub-criteria.

4.6 Request for Clarification

The SOQ Template (Appendix C) provided in this RFQ is designed to facilitate Respondent's presentation of accurate and complete information in a format conducive to our efficient review and evaluation of SOQs. If information in the SOQ is not complete, we may either declare the SOQ non-responsive or notify the Respondent, who may be allowed to participate further in the procurement of this Project if all information required is provided within the timeframe we establish. We will promptly notify the Respondent of any insufficient statements or incomplete information via a request for clarification (via E-Mail). We may also request supplemental information from a Respondent regarding its SOQ at any time prior to finalizing the Short-List. A Respondent's response must be limited to answering the specific information we requested. If the Respondent does not provide a timely response, we may declare the SOQ non-responsive.

4.7 Respondent Interviews

We do not anticipate conducting interviews as part of the RFQ process but reserve the right to do so. If we elect to conduct interviews, we will notify each Respondent via E-Mail to arrange a date and time to conduct the interview.

5. RETAINED RIGHTS

Our issuance of this RFQ constitutes only an invitation to Respondents to present their qualifications. This RFQ is not a tender or an offer nor a request for proposals, and we have no intention to make an offer by issuing this RFQ. The rights reserved by us, which we may exercise in our sole and absolute discretion, include without limitation the right to:

- (a) Require one or more Respondents to clarify the SOQs submitted, or require additional information from the Respondent (which can be sought from any Principal Participant) in which case the Respondent must provide that information within a reasonable time from the date of our request;
- (b) Conduct investigations with respect to the qualifications and experience of the Respondent;
- (c) Visit and examine the Respondent's Similar Projects, and any of the other projects referenced in the SOQs, and to observe and inspect the operations at these projects;
- (d) Waive any defect or technicality in any SOQ received;
- (e) Determine which Respondents are qualified to be shortlisted to receive the RFP and submit Proposals in response to the RFP;
- (f) Refuse to consider or evaluate and ultimately eliminate any Respondent which submits an incomplete or inadequate response or is not responsive to the requirements of this RFQ or which either directly or through any Respondent Team member, fails to meet any of our directions or requirements under this RFQ;
- (g) Supplement, amend, or otherwise modify this RFQ, prior to the date of submission of the SOQs;
- (h) Issue one or more amendments to this RFQ extending the SOQ Due Date;
- (i) Receive questions concerning this RFQ from Respondents and to provide these questions, and our responses, to all Respondents;
- (j) Cancel this RFQ in whole or in part with or without substitution of another RFQ if determined to be in our best interest;
- (k) Change any Evaluation Criteria upon us giving reasonable notice to Respondents;
- (l) In selecting the Shortlisted Respondents, take into consideration during our evaluation of SOQs our knowledge and previous experience and dealings with the Respondent, any Respondent Team member, any Lead Contractor, Key Personnel, Lead Designer or any Principal Participant or Key Subcontractor;
- (m) Without limiting such clause, information (including opinions, representations and advices) about the past and current performance of the Respondent or any Principal Participant (where the Respondent is comprised of more than one Principal Participant) under any other contract,

arrangement or dealing between the Respondent or that Principal Participant and a government party; and

- (n) Information concerning the Respondent or any Principal Participant, Lead Contractor, Key Subcontractor and Lead Designer which is in the public domain or which is obtained by us through investigations or howsoever;
- (o) Remove or add a Short-Listed Respondent;
- (p) Discuss with the Respondent any matter arising out of this RFQ, or their SOQ;
- (q) Publish the names of the Respondent, the Respondent Team members, Lead Contractors, Lead Designers, Key Subcontractors, or key advisors;
- (r) Waive any requirement or obligation under this RFQ; and
- (s) Take any action affecting the RFQ process or the Project that would be in our best interest, including without limitation cancel, suspend or change the Project, the procurement method for the Project, or any aspect of the procurement process or to take any other action as we consider, in our absolute discretion, appropriate in relation to the procurement process for the Project.

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6. DEFINITIONS

The following defined terms are used in this RFQ:

Addenda or Addendum	Written supplemental additions, deletions, and modifications to the provisions of this RFQ issued by the Port Authority, after the date the RFQ is issued.
Bergen Electrical Substation	Is defined in Section 1.1 of the Project Data Sheet.
Best Value	Is defined in Section 2.6 of this RFQ.
BIM	Building Information Modeling.
Categorical Exclusion (CATEX)	The categorical exclusion to be issued by the Federal Aviation Administration for the Project under the National Environmental Policy Act.
Change in Law	Is defined on page 14 of the Summary of DBA Key Commercial Terms (Appendix B).
Compensable Delay Event	Is defined on Page 12 of the Summary of DBA Key Commercial Terms (Appendix B).
Completion Milestone	Is defined on Page 3 of the Summary of DBA Key Commercial Terms (Appendix B).
Conflict of Interest	a Person or organization: (1) had or has relations with Persons; (2) engaged or is engaging in activities; or (3) performed or is performing services for the Port Authority or another entity concerning the Project or a related project, that afford such Person or organization with a competitive advantage or that might otherwise impair the Person or organization's objectivity, or that render such Person or organization unable, or potentially unable, to render impartial assistance or advice on the Project.
Contact Person	The Port Authority staff member identified in Section 3.1.
Contract Documents	Is defined on Page 4 of the Summary of DBA Key Commercial Terms (Appendix B).
Contract Price	Is defined on Page 2 of the Summary of DBA Key Commercial Terms (Appendix B).
Delay Event	Is defined on Page 11 of the Summary of DBA Key Commercial Terms (Appendix B).
Demolition Completion	Is defined on Page 3 of the Summary of DBA Key Commercial Terms (Appendix B).

Design-Build Agreement (DBA)	The fixed-price, lump sum, date certain agreement for the design and construction of the Project between the Port Authority and the Design-Builder selected from the RFP process.
Design-Builder	The Preferred Proposer selected pursuant to the RFP with whom the Port Authority enters into the Design-Build Agreement.
Design-Builder Party	Is defined on Page 11 of the Summary of DBA Key Commercial Terms (Appendix B).
Equity Participant	Any Person holding (directly or indirectly) 15% or greater interest in the Respondent.
Evaluation Criteria	The SOQ evaluation criteria set forth in Section 4.4 of this RFQ.
Farmers Project	Is defined in Section 1.4 to this RFQ.
FAA	Federal Aviation Administration.
Force Majeure Event	Is defined on Page 13 of the Summary of DBA Key Commercial Terms (Appendix B).
JFK or John F. Kennedy Airport	John F. Kennedy International Airport, in Queens New York.
Key Personnel	Is defined in Section 2.1 of the SOQ Template (Appendix C).
Key Subcontractor	Is described in Section 1.11 of the Project Data Sheet.
Lead Contractor	A Principal Participant or a first-tier Subcontractor retained by the Design-Builder, who in each case, has substantial responsibility for directly performing the construction Work for the Project.
Lead Designer	A Principal Participant or a first-tier Subcontractor retained by the Design-Builder, who in each case, has substantial responsibility for directly performing the design and architectural Work for the Project.
Pass/Fail Evaluation Criteria	The evaluation criteria set forth in Section 4.3 of this RFQ.
Person	Any individual, firm, corporation, company, sole proprietorship, limited liability company (LLC), joint venture, voluntary association, partnership, trust, unincorporated organization, or other legal entity.

Port Authority	The Port Authority of New York and New Jersey, a municipal corporate instrumentality and political subdivision of the States of New York and New Jersey, creating 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.
Preferred Proposal	The Proposal that is determined to be compliant with the requirements of the RFP, will deliver Best Value to the Port Authority for the Project and is selected by the Port Authority as the Preferred Proposal.
Preferred Proposer	The Proposer whose Proposal is determined by the Port Authority to be the Preferred Proposal.
Principal Participant	Any of the following entities: (1) if the Respondent is a partnership, joint venture, or limited liability company, any general partner or any member of the partnership, joint venture, or limited liability company and (2) any Equity Participant.
Procurement Website	The Port Authority's website dedicated to providing the public with information regarding Port Authority procurement opportunities, located at the following address: http://bit.ly/2NIVw6CPAProcurement .
Project	The improvements to be designed and constructed by the Design-BUILDER and all other Work to be provided by the Design-BUILDER in accordance with the Contract Documents as defined further in Section 1.1 of the Project Data Sheet.
Project Advisors	The third-party consultants, lawyers or advisors to the Port Authority for the Project identified in Section 1.8 of the Project Data Sheet.
Project Data Sheet	The Project Data Sheet attached as Appendix A to this RFQ.
Project Goals	Is defined in Section 1.2 of the Project Data Sheet
Project Guarantor	An entity that will irrevocably, unconditionally, jointly and severally guarantee to the Port Authority the Design-BUILDER's payment and performance of all obligations under the Design-Build Agreement.

Project Site	The limited and defined area identified in the DBA for the Design-Builder's performance of the Work and delivery of the Project.
Proposal	A proposal submitted by a Proposer in response to the RFP, including any revisions to the RFP.
Proposer	A Person submitting a Proposal in response to the RFP.
Request for Proposals (RFP)	The written solicitation document issued by the Port Authority (as amended by any Addenda) seeking Proposals to be evaluated to identify the Proposer offering Best Value to the Port Authority in connection with the Project. The RFP will be issued only to Persons who are on the Short-List.
Request for Qualifications (RFQ)	Is defined in Section 1.1.
Respondent	At anytime prior to issuance of the Project's Short-List, a Person comprised of one or more Principal Participants. A Person submitting a Statement of Qualifications for the Project in response to this RFQ.
Respondent Team	The Lead Contractor, Lead Designer, Key Subcontractors and Key Personnel.
Short-List	The list of Respondents that the Port Authority determines satisfy the pass/fail criterion in this RFQ and are the most qualified to potentially deliver the Project, based on an evaluation of the SOQs submitted by Respondents in accordance with the Evaluation Criteria.
Shortlisted Respondents	The list of Respondents that have were selected for the Shortlist by the Port Authority in connection with this RFQ.
Similar Project	Is defined in Section 1.6 of the Project Data Sheet.
Site Validation Period	Is defined on Page 8 of the Summary of DBA Key Commercial Terms (Appendix B).
SOQ Due Date	Is defined in Section 3.7 of this RFQ.
SOQ Forms	Those forms included in the SOQ Template for completion by the Design-Builder as part of its SOQ.
Stakeholders	Is defined in Section 1.7 of the Project Data Sheet.
Statement of Qualifications (SOQ)	The documents submitted by a Respondent in response to this RFQ.

Subcontractor

Any entity that is not a Principal Participant that enters into a subcontract to perform any portion of the Work for the Project

Work

All of the administrative, design, engineering, utility support services, procurement, legal, professional, manufacturing, supply, installation, construction, supervision, management, testing, verification, labor, materials, equipment, maintenance, warranty, documentation, and other duties and services to be furnished and provided by the Design-Builder as required by the Contract Documents, including all efforts necessary or appropriate to achieve final acceptance of the Project and to fulfil the Design-Builder's warranties.

APPENDIX A

PROJECT DATA SHEET

TABLE OF CONTENTS

1.	THE PROJECT	1
1.1	Project Description.....	1
1.2	Project Goals	1
1.3	Substantial Completion Requirement	1
1.4	Project Contract Value	1
1.5	Project Scope Framework.....	1
1.6	Similar Project.....	3
1.7	Project Stakeholders.....	3
1.8	Project Advisors.....	4
1.9	Environmental Permitting Status	4
1.10	Status of Geotechnical and Utility Reference Documents	4
1.11	Key Subcontractors.....	4

EXHIBITS

Exhibit 1 – Existing Van Wyck Substation & Location for Proposed New Bergen Substation

Exhibit 2 – Existing Bergen Substation

Exhibit 3 – JFK Substations – Existing Locations

1. THE PROJECT

1.1 Project Description

The JFK Bergen Electrical Substation Replacement Project (the “**Project**”) involves the replacement and demolition of the existing Bergen and Van Wyck 5-kilovolt (5kV) electrical substations at JFK, through the design, construction and commissioning of a new, single Bergen 5kV substation (the “**Bergen Electrical Substation**”). The Bergen Electrical Substation is a critical component of the electrical power distribution system at JFK and assists in supplying power to JFK airside-landside facilities and associated supporting infrastructure. The decommissioning and demolition of the existing Bergen and Van Wyck substations will occur only after commissioning and substantial completion of the new replacement Bergen Electrical Substation.

1.2 Project Goals

The Port Authority’s general goals and objectives for the Project are:

- Construct a new Bergen Electrical Substation that avoids and reduces any flood risks;
- Construct the new Bergen Electrical Substation to ensure resiliency and service continuity;
- Facilitate acceptable quality control of materials and the Work;
- Ensure connectivity and compatibility with existing Port Authority facility management systems; and
- and speed of delivery for early commissioning of the new Bergen Electrical Substation.

1.3 Substantial Completion Requirement

Substantial completion for the Project must be achieved no later than August 2023.

1.4 Project Contract Value

The estimated contract price for the Project is estimated to be \$65 - \$90 million.

1.5 Project Scope Framework

Summary - The Design-Builder will be responsible for all Work necessary to deliver, on-time and on-budget the new Bergen Electrical Substation and all Work necessary to decommission, demolition and restore the Project site of the two existing substations, unless stated otherwise in the RFP documents.

The Design-Builder’s scope of Work for the Project generally includes:

- Coordinating multi-disciplinary construction and design, including, low and medium voltage electrical, architecture, landscape architecture, mechanical, plumbing, structural, traffic control and civil fields;
- Planning, coordinating, designing, tracking and documenting compliance with sustainability credits in multiple sustainability rating systems in an effort to achieve LEED v4 BD+C certification equivalency;

- Identifying hazards associated with climate change and incorporate flood mitigation strategies into the design solution, as will be described further in the technical requirements and performance criteria for the Project;
- Designing flood mitigation strategies based on design flood elevations in accordance with Port Authority Climate Resilience Guidelines which incorporate projected sea level rise;
- Obtaining required permits and approvals, including utilities and governmental entities, as required;
- Surveying existing electrical equipment and structures, including and not limited to, manholes, duct banks, conduit systems, cables, switchgear, controls, and relays;
- Inspect and survey trees and other landscape elements as required by the Work;
- Interfacing and coordinating the Work with other stakeholders and projects in the local and immediate vicinity of the Project and proper coordination of the Work to minimize adverse impacts to operations, traffic and pedestrians within, or around, JFK;
- Designing and constructing a the Bergen Electrical Substation, to be located within a building which is visible to the public, with four transformers each rated to be 10/14 MVA, switchgears, and other facilities required for the Project, in accordance with New York City Electrical Building Code, regional utility provider standards (i.e. Consolidated Edison), specifications and guidelines. The electrical substation structure will house the Bergen Electrical Substation's electrical equipment and those items needed to support the structure systems. Only the Bergen Electrical Substation's transformers will be located outdoors;
- Designing and constructing required duct-banks, cables and connections necessary for the operation of the Bergen Electrical Substation. Also design and construct required systems including and not limited to SCADA, CCTV, Access Control, Fire Protection and HVAC systems;
- Commissioning of the Bergen Electrical Substation will be the responsibility of the Design-Builder. The Design-Builder must coordinate with and commission the Project in a manner that is fully coordinated with the Port Authority's commissioning agent in order to allow for their oversight, review and approval of such commissioning and Substantial Completion of the Project;
- Designing and constructing of the 5kV conduit interconnection duct-bank required for reconnecting the existing 5kV loads, supplied by the existing Bergen and Van Wyck Substations, to the new Bergen Electrical Substation within a designated corridor of approximately 1-mile to be identified at the RFP phase;
- Excavation, SOE, coordination, utility location & designation, utility support & protection and the relocation of utilities as necessary for the completion of the Work;
- Following Substantial Completion of the new Bergen Electrical Substation, decommissioning and removal of the existing Van Wyck and Bergen Substations and all associated equipment and systems as well as demolition of any other existing site structures and any required civil design & construction including and not limited to land development, drainage and soil erosion;

- Restoration of the demolished substation sites and those facilities disturbed from the performance of the Work. Restoration to include and not be limited to land development, backfill and crusher run stone;
- Reasonable expectations as they relate to inspections, testing and verifications of construction materials and products including, structural steel welding and bolting, protective coatings, soils, concrete, asphalt, etc. relevant to the completion of the Work;
- Utilization of BIM tools for Project scheduling, coordination, phasing, construction and as required by the RFP documents; and
- and any other Work required to satisfy the DBA and its technical requirements and performance criteria.

1.6 Similar Project

A “**Similar Project**” is defined as:

- The design, construction and commissioning of an electrical medium voltage substation, including transformers, switchgears and other substation components constructed in accordance with a New York City regional utility provider’s (or reasonable equivalents) standards, specifications and guidelines within the last 5 years;
- An infrastructure project by which the coordination, design, relocation, protection and construction of utilities, visible to the general public (as described in Section 1.5 above), were completed per industry and regional standards, specifications and guidelines within the last 5 years;
- An infrastructure project by which the coordination, design and construction of major electrical work was completed via design-build procurement within the last 5 years; or
- any combination of the above.

1.7 Project Stakeholders

Project Stakeholders include, any Federal or State agency and relevant third parties that have jurisdiction over, or involvement in, the Project.

The current known Project Stakeholders are:

- Federal Aviation Administration (FAA);
- Consolidated Edison, Inc. (Con Edison) (Con Ed);
- New York City Department of Transportation (NYCDOT);
- New York City Department of Environmental Protection (NYCDEP);
- New York City Fire Department (NYFD);
- New York City Department of Parks & Recreation (NYCDPR);
- and Verizon.

1.8 Project Advisors

We have retained a team of Project Advisors under exclusivity arrangements to assist us in the delivery of the RFP Process and the delivery of the Project. Our Project Advisors are not eligible to assist or participate on a Proposer team. Moreover, our Project Advisors are not available to provide any services or information to a Proposer on the Project without our prior written approval.

Our current Project Advisors are:

- Arup (Technical Advisors)
- Orrick, Herrington & Sutcliffe LLP (Legal Advisors)

1.9 Environmental Permitting Status

The Port Authority is coordinating with the FAA for the completion of an environmental assessment per the National Environmental Policy Act for the Project, as may be required. The Port Authority is confirming if the FAA has jurisdiction over this Work and is currently in communication with the FAA. If required, the Port Authority will pursue a 'Categorical Exclusion' (CATEX) for the Project. In the event a CATEX is not issued by the FAA, the Port Authority is confident that a Finding of No Significant Impact ultimately be issued. Status updates on the environmental assessment will be issued by the Port Authority as additional information becomes available.

1.10 Status of Geotechnical and Utility Reference Documents

Geotechnical

The Port Authority will make available geotechnical and utility data as part of the RFP. Please see the Summary of DBA Key Commercial Terms (Appendix B) for a high-level overview of the expected entitlements the Design-Builder will have under the DBA to claim a compensation event for the discovery of any unknown site condition.

1.11 Key Subcontractors

Any Subcontractor to the Design-Builder that is primarily responsible for performing the electrical Work for the Project will be deemed a **"Key Subcontractor"** and must be identified within the SOQ, as required by the RFQ and SOQ Form.

2. EXHIBITS

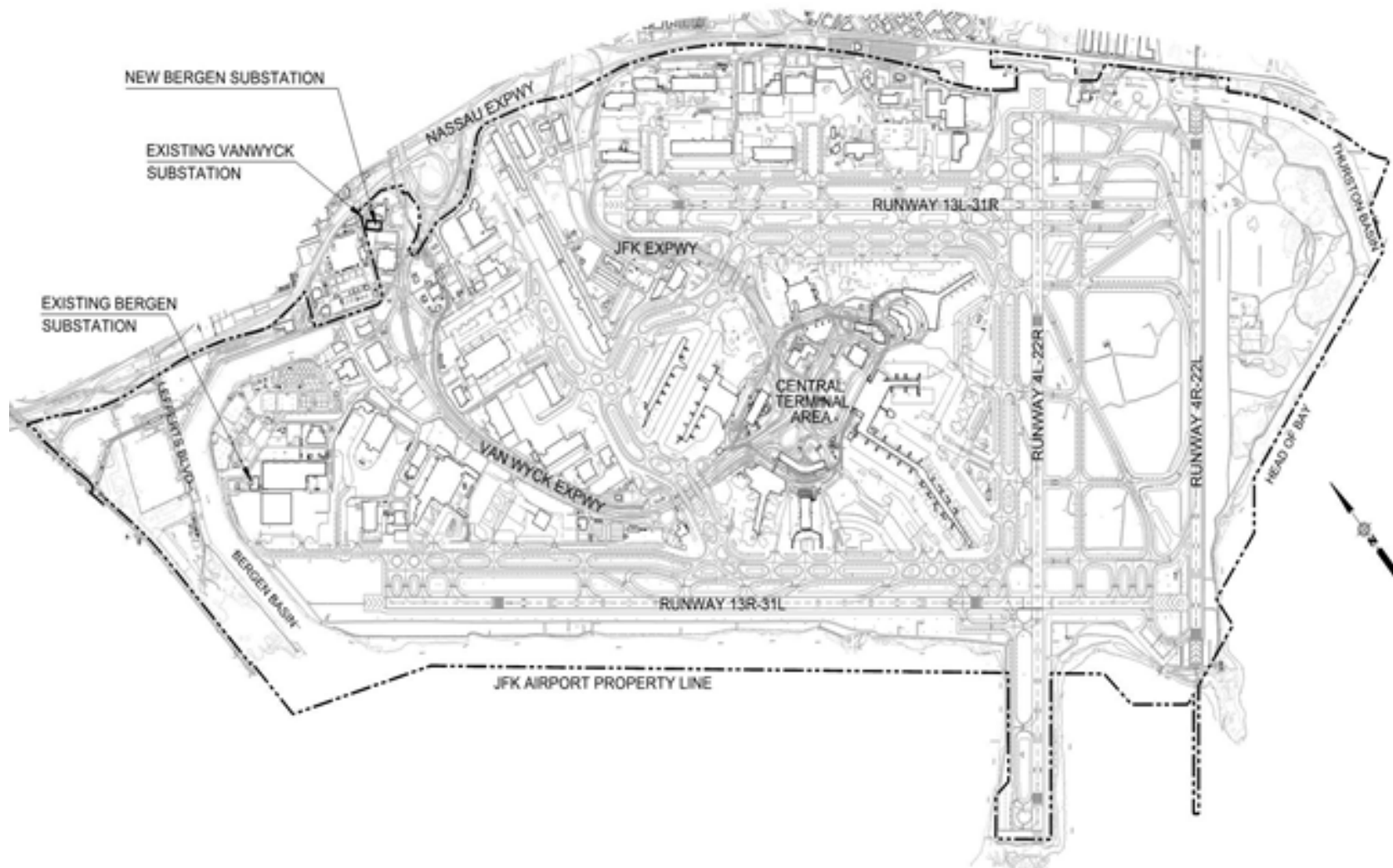
2.1 EXHIBIT 1 – EXISTING VAN WYCK SUBSTATION & LOCATION FOR PROPOSED NEW BERGEN SUBSTATION



2.2 EXHIBIT 2 – EXISTING BERGEN SUBSTATION



2.3 EXHIBIT 3 – JFK SUBSTATIONS – EXISTING LOCATIONS



APPENDIX B
JFK AIRPORT
BERGEN ELECTRICAL SUBSTATION PROJECT
DESIGN-BUILD AGREEMENT
SUMMARY OF DBA KEY COMMERCIAL TERMS

This document provides a summary of the key commercial terms which may be included in the Design-Build Agreement (“**DBA**”) between the Design-Builder and the Port Authority in connection with the Project. This document is being provided to potential Respondents for informational purposes only and is not intended to be referenced for purposes of commenting on the actual the terms of the DBA released in connection with the RFP during the Project’s procurement. Additionally, the terms included in this document are in no way final or binding on the Port Authority and are subject to change by the Port Authority, in its sole discretion, at any time during the procurement process.

DBA OVERVIEW	
PRICE, SECURITY & PAYMENTS	
Contract Price	<p>This is a fixed price, lump sum, date-certain design build agreement to be paid to the Design-Builder on monthly progress payments, based on a percentage of Work completed in accordance with the Design-Builder's schedule of values.</p> <p>Except for any adjustment to the Contract Price in accordance with any change orders issued in connection with a Compensable Delay Event or as otherwise approved by the Port Authority, the Contract Price will not be adjusted for any reason and the Design-Builder is solely responsible for any costs incurred in excess of the Contract Price.</p>
Retainage Amounts	<p>As security for the Design-Builder's performance, the Port Authority will retain 5% from each monthly payment. The Port Authority may apply all or any portion of the total Retainage Amounts that it holds at any time and for any reason described in the DBA, which include to cover any Port Authority losses in connection with any Design-Builder breach or default of the DBA.</p> <p>Upon Substantial Completion, the Port Authority will release and return to the Design-Builder, within fifty days, a to be specified percentage of the total Retainage Amounts that it holds, as described in the DBA.</p> <p>However, the Port Authority will not release any Retainage Amounts to the Design-Builder, if a Design-Builder default has occurred and is continuing at the time the Design-Builder would otherwise be entitled to a reduced retainage percentage or a release of Retainage Amounts until the Design-Builder default has been cured.</p> <p>The remainder of the retainage will either be released following final completion or expiration of the warranty period, the Port Authority will release and return the final retainage balance with its final payment.</p>
Performance & Payment Bonds	<p>The Design-Builder will be required to price the cost of a performance bond and payment bond as part of its proposal during the RFP Phase. The bonds will be required to be sized to a percentage of the Contract Price (to be</p>

		determined by the Port Authority) and expire concurrently with the expiration of either final completion or expiration of the warranty period. Based on the cost, the Port Authority may or may not direct the Preferred Proposer to acquire these bonds for the Project. If the Port Authority directs the Preferred Proposer to acquire these bonds, then the Design-Builder will be required to deliver the performance bond and payment bond to the Port Authority on or before the execution date of the DBA. The Port Authority will be entitled to claim on any performance bond following any default or breach of the DBA by the Design-Builder.
Guarantee		Parent Guarantor guarantees may be required of Principal Participants if the Respondent or a Principal Participant is not a parent company for the Respondent or each applicable Principal Participant, as applicable. If a guarantee is required, the Design-Builder must provide the Port Authority with a guarantee executed by the applicable Project Guarantor on or before the DBA's execution date, in which the Project Guarantor guarantees all the Design-Builder's obligations under the DBA.
Mobilization Payment		The Design-Builder will be entitled to payment for mobilization in the amount set forth in the DBA. The mobilization payment may include costs for work completed prior to the DBA's execution and the cost for certain long-lead time equipment, such as the transformers, plus initial design fees, insurance costs and performance bond and payment bond costs, after submitting a detailed request for the payment. The Port Authority will approve and pay the mobilization payment, without retainage withheld, on or around the DBA's effective date.
COMPLETION DEADLINES, SCHEDULE AND DELAY		
Completion Deadlines	Milestone	<p>The Design-Builder commits to develop the Project in accordance with the time periods set forth in the proposed Project schedule, including the following "Completion Milestone Deadlines":</p> <ul style="list-style-type: none"> The deadline for substantial completion will be set by the Design-Builder, but may not be longer than August 2023 "Substantial Completion" deadline;

	<ul style="list-style-type: none"> • The deadline for demolition will be set by the Design-Builder, but may not be longer than September 2023; and • The deadline for final completion will be set by the Design-Builder, but may not be longer than 11 months from the Substantial Completion date.
Commissioning Agent	The Port Authority plans to engage an independent third-party commissioning agent to be involved in the Project and assist the Port Authority in certifying that the Design-Builder has properly commissioned the Project in accordance with DBA. The Port Authority plans to pay the costs for the commissioning agent; however, any increased costs incurred by the Port Authority due to a Design-Builder default will be borne by the Design-Builder.
CONTRACT RIGHTS & RESPONSIBILITIES	
Design & Construction	<p>The Design-Builder will be responsible for the design and construction of the Project in accordance with the DBA and any change orders, final design and construction documents, the parent guaranty (the “Contract Documents”).</p> <p>In performing the Work, the Design-Builder, in addition to performing all other requirements in the Contract Documents must furnish all design work and construction work, including all engineering and other services, provide construction management, quality controls, quality assurance and quality management and all work, including all materials, equipment, labor, and installations, and undertake all efforts necessary or appropriate to construct the Project in accordance with the scope of work described in the Project technical requirements and performance criteria (which is summarized in the Project Data Sheet to the RFQ), so as to achieve Substantial Completion, demolition completion and final acceptance by the applicable Completion Milestone Deadlines set out in the Project schedule.</p>
Warranties	<p>The Design-Builder will warrant to the Port Authority that:</p> <ul style="list-style-type: none"> (i) all design Work performed under the Contract Documents, including that done by its Subcontractors and manufacturers, will be completed in accordance with the requirements of

	<p>the Contract Documents, and will be performed in accordance with the standard of care, skill and diligence as would be provided by an engineering or architecture firm experienced in supplying similar services nationally in the US to entities owning projects of technology, complexity and size similar to that of the Project;</p> <p>(ii) all construction Work (including all materials and equipment furnished as part of the construction Work) will be: completed in accordance with the requirements of the Contract Documents; new, unless otherwise specified in the Contract Documents; of good quality, undamaged and in conformance with all requirements of the Contract Documents; free of all defects in materials and workmanship, and the completed Project must perform its intended functions as explicitly described or implied in the Contract Documents; and</p> <p>(iii) the final design documents, the final construction documents, the record drawings and all other records required under the DBA will be: accurate and complete; in conformance with all requirements of the Contract Documents; and accurate in their reflection of the Project's condition as of final completion.</p> <p>During the “Warranty Period”, which will be (i) 12 months from the date of Substantial Completion for all Work completed on, or prior to, Substantial Completion and (ii) 12 months from the date of final completion, for all Work completed between Substantial Completion and final completion, the Design-Builder must, at its cost, promptly and completely correct any defects and nonconforming Work. Should the Design-Builder fail to promptly remedy such defect or nonconforming Work during the Warranty Period in accordance with the DBA, the Port Authority may perform such corrective Work or engage a third party to do so, and the Design-Builder will be required to reimburse the Port Authority for all costs and expenses incurred by the Port Authority in performing such correction.</p>
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GOVERNMENTAL APPROVALS, ENVIRONMENTAL & PERFORMANCE RISKS	
Permits and Approvals	Except with respect to the Port Authority's obligation to obtain a categorical exclusion under the National Environmental Policy Act (" NEPA ") for the Project, the Design-Builder will be responsible for obtaining and maintaining throughout the term of the DBA, all governmental approvals (including any application, revision, modification, amendment, supplement, renewal or extension to any governmental approval) required in connection with its performance of the Work, at its sole cost and expense. Once the categorical exclusion under NEPA is obtained by the Port Authority, the Design-Builder will be required to comply with and maintain the categorical exclusion and will be responsible for any amendments or modifications that may be necessary thereafter based on the Design-Builder's performance of the Work.
Environmental Compliance	The Design-Builder will be required to design and construct the Project, so that it complies with, and can be operated in compliance with, all requirements and conditions (including all mitigation) to be satisfied under the Contract Documents, NEPA documents, applicable laws, applicable standards and governmental approvals, and the other requirements, policies and guidelines of the Port Authority, concerning the environment and hazardous materials that are applicable to the Project site or the Work.
CONTRACT CHANGES & COSTS OUTSIDE THE CONTRACT	
Change Orders	<p>At any time, the Port Authority or the Design-Builder will be permitted to propose a change to the Work, including a value engineering change proposal, by delivering a written notice to the other party setting out the proposed change to the Work.</p> <p>The Design-Builder will be required to then deliver to the Port Authority a proposal for implementing the proposed change. If the parties agree on the proposed change and Design-Builder proposal, the Port Authority will prepare and issue a change order that sets out the parties' agreement, which will include any adjustment (if any) of the Contract Price and the completion dates and will fully and finally resolve the Design-Builders entitlement to such in connection with the change order.</p>

	<p>The Design-Builder will not be permitted to suspend performance of the Work during the negotiation of any change order, except as permitted by the agreement.</p>
Unknown Site Conditions	<p>The Design-Builder will represent and warrant in the DBA that it has familiarized itself with the Project Site, its physical conditions, including all site conditions, normal and usual soil conditions, roads, the existence of obstacles to performing the Work, the availability and presence of utilities, topographical conditions and air and water quality conditions, the location and character of existing or adjacent work and structures, the surrounding locations and other general and local conditions (including equipment and labor) (based on the documents made available during the RFP phase and a visible inspection of the Project Site and surrounding locations); all local and other conditions which may be material to the Design-Builder's performance of the Work (including transportation; seasons and climate; access, availability, disposal, handling and storage of materials and equipment; and availability and quality of labor).</p> <p>Accordingly, as described in the definition of Compensable Delay Events, the Port Authority will only provide compensation and time relief to the Design-Builder for those unknown site conditions that:</p> <p>Type 1 Conditions - (i) existed in, on or under a portion of the Project Site prior to the date on which the Design-Builder gains possession of a relevant portion of the Project Site and that represents a materially different condition to that described in the Available Documents; and</p> <p>Type 2 Conditions - (ii) are not conditions that could reasonably have been identified or discovered by an appropriately qualified and experienced contractor, engineer or expert working in that field exercising due care and skill and best management practice in the same or equivalent circumstances through review and analysis of the available documents and any publicly available information that, in each case, were available or should have been available to the Design-Builder before the Proposal Due Date.</p> <p>These Type 1 and Type 2 conditions will apply to unknown hazardous environmental conditions, unknown geotechnical conditions, unknown physical conditions</p>

		<p>(e.g. within manholes or other physical structures existing within or on the Project Site), unknown utilities, unknown endangered species and unknown archaeological remains.</p> <p>If at any time during the performance of the Work, the Design-Builder becomes aware of any unknown site condition that is neither a Type 1 or Type 2 condition, the Design-Builder will be entitled to claim a change order for a Compensable Delay Event in accordance with the terms of the DBA.</p>
Site Validation		<p>The Design-Builder will be required to undertake all tests, inspections and investigations of the Project site (including additional geotechnical evaluations, hazardous materials or utility studies) as the Design-Builder deems necessary to perform its obligations under the DBA.</p> <p>If the Design-Builder identifies any undisclosed archaeological remains, undisclosed endangered species, undisclosed utilities, undisclosed hazardous environmental conditions, undisclosed physical conditions or undisclosed geotechnical conditions, it may request a change order.</p> <p>However, the Design-Builder may only request a change order for any undisclosed utilities or undisclosed physical conditions if the Design-Builder submits the applicable claim before the end of the “Site Validation Period”, which will be a specified number of days from the date access is made available to the Design-Builder by the Port Authority under the DBA.</p> <p>The Design-Builder will not be entitled to such a change order or to otherwise claim any adjustment to the Contract Price, or request an extension of time, on the basis of the conditions or subsurface conditions at the Project site after the Site Validation Period.</p>
Design-Builder Changes	Minor	<p>The Design-Builder may make a written request to the Port Authority to make minor changes to the Project technical requirements and performance criteria consistent with the intent of the Contract Documents. Any minor change request may not be retroactive and may only be implemented by the Design-Builder if signed in writing by the Port Authority.</p>

Directive Changes	<p>The Port Authority may at any time deliver to the Design-Builder a change directive (a written order prepared and signed by the Port Authority directing the Design-Builder to perform extra Work).</p> <p>Upon receipt of a change directive, the Design-Builder must promptly implement and perform the extra work as directed by the Port Authority in the change directive and may request a change order for a Compensable Delay Event.</p>
Hazardous Materials	<p>As part of the Work, the Design-Builder will be responsible for the management, treatment, handling, storage, monitoring, remediation, removal, transport and disposal of all hazardous materials that are encountered in, under or on the Project Site during performance of the work.</p> <p>The Design-Builder will (without accepting or assuming responsibility under any applicable law) be responsible for obtaining and maintaining all Governmental Approvals relating to any remedial action and will be solely responsible for compliance with all governmental approvals and applicable laws concerning or relating to hazardous materials in respect thereof.</p> <p>As between the Port Authority and the Design-Builder:</p> <p>(i) the Design-Builder will be deemed the sole generator and arranger under 40 C.F.R., Part 262 with respect to any hazardous materials brought to the Project site by the Design-Builder or Design-Builder Party or any third party that has physically entered the Project Site or released by the Design-Builder; and</p> <p>(ii) the Port Authority or its designee will be deemed the sole generator and arranger under 40 C.F.R., Part 262 with respect to any hazardous materials removed from the Project Site for disposal that are not the responsibility of the Design-Builder under the DBA.</p>
Utilities / Con Edison	<p>The Design-Builder will be responsible for obtaining at its cost, all utilities that it requires to undertake and timely complete the Work, all in accordance with the general conditions.</p> <p>The Design-Builder will be responsible for coordinating and causing all necessary utility relocations. The Design-Builder will be required to fulfill this responsibility either</p>

	<p>by performing the utility relocations itself, or by reimbursing any applicable utility owner for the utility relocation. The Design-Builder must preserve the integrity and maintain the ability of the Port Authority (or its contractors and suppliers) to use and operate utilities that are not required to be relocated.</p> <p>The Design-Builder will acknowledge that Consolidated Edison is critical stakeholder for purposes of delivering the Project. The Design-Builder will also acknowledge that the Port Authority will assist the Design-Builder in communicating and coordinating directly with Consolidated Edison, and that the Port Authority will be the sole contact for any such coordination. The Design-Builder must not (without Port Authority express written approval) directly communicate with Consolidated Edison concerning the Project or the Work. To the extent the Port Authority receives any communications from Consolidated Edison relevant to the Design-Builder's Work, the Port Authority will promptly forward such communications to the Design-Builder.</p> <p>The Port Authority will review and confirm for completeness all design submittal packages submitted by the Design-Builder which are required by Consolidated Edison, and otherwise will only serve as a "pass-through entity" for purposes of coordination and communication with Consolidated Edison for the Project. The Design-Builder will be required to comply, and proactively fulfill any Consolidated Edison requirements and obligations that the Port Authority is otherwise required to comply with in connection with the Project. The Design-Builder will be required to affirmatively understand any and all Consolidated Edison rules, regulations and requirements and must (i) comply with any Consolidated Edison requirements on a fully back-to-back basis to the same extent and to the level required by the Port Authority and (ii) proactively coordinate with the Port Authority to ensure the Design-Builder understands and possesses all information relevant to Consolidated Edison necessary to perform the Work.</p> <p>The Design-Builder acknowledges that the Port Authority's failure to inform the Design-Builder of a Consolidated Edison requirement or obligation not otherwise requested by the Design-Builder or otherwise</p>
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	provided by Consolidated Edison to the Port Authority shall not serve a basis for a Delay Event.
Delay Events	<p>If a Delay Event occurs, the Design-Builder may request a change order for one or more of the following in accordance with, and subject to, the requirements for timely notice, mitigation, exhaustion of all float, and evidentiary support required in the DBA:</p> <ul style="list-style-type: none"> (a) an extension to the Completion Milestone Deadlines for one or more Completion Milestones Deadlines, including the Substantial Completion deadline; (b) in the case of a Compensable Delay Event only, an adjustment to the Contract Price for any net costs that the Design-Builder has incurred or will incur as a direct result of a Compensable Delay Event; and (c) relief from default for failing to perform any Work directly impeded by such Delay Event. <p>Delay Events are defined as the following (except to the extent attributable to any breach of the DBA, applicable law, any agreement with a utility owner or any governmental approval or any act, omission, negligence, recklessness or willful misconduct of the Design-Builder, any Principal Participants, any Project Guarantor, any Subcontractor, and any other person performing any of the Work on or behalf of the Design-Builder (a “Design-Builder Party”)):</p> <ul style="list-style-type: none"> (a) a Compensable Delay Event (<i>see definition below</i>); (b) a Force Majeure Event (<i>see below definition</i>); (c) a Change in Law (<i>see below definition</i>); (d) fire, explosion, tornados, hurricanes, flood, earthquakes, riot and civil commotion; (e) an adverse weather event; (f) any blockade or embargo; (g) any official or unofficial strike, lockout, go-slow or other labor dispute generally affecting the construction industry or a significant sector of it; (h) following the Design-Builder’s timely and complete submission of a compliant or legally sufficient application or request for approval or a permit, any unreasonable and unjustifiable delay by any

	<p>governmental entity in issuing any permit or approval required for the performance of the Work, following a period equal to the greater of (i) the date identified in the Project schedule for such governmental approval to be issued and (ii) the time period provided for such issuance under applicable law, plus a period of 90 days; or</p> <p>(i) any delay attributable a utility owner failing to perform its obligations under a two-party agreement in accordance with the terms of such agreement, where such delay (or delays resulting from such failures by multiple utility owners) causes one or more critical path activities approved by the Port Authority to be adversely impacted for a period of 90 days in the aggregate. The computation of 90 days in the aggregate shall treat any day of delay that runs concurrently with another day of delay, regardless of whether it is a delay caused by the utility owner or a different utility owner, as a single day and not as two days.</p>
Compensable Delay Events	<p>Compensable Delay Events will be limited to the following (except to the extent attributable to any breach of the DBA, applicable law, any agreement with a utility owner or any governmental approval or any act, omission, negligence, recklessness or willful misconduct of the Design-Builder or any Design-Builder Party):</p> <p>(a) any breach of the DBA by the Port Authority that has a material adverse effect on the Design-Builder's performance under the DBA;</p> <p>(b) the issuance by the Port Authority of a change directive;</p> <p>(c) any suspension of the Work that constitutes a Compensable Delay Event;</p> <p>(d) the issuance by the Port Authority of a safety compliance order that constitutes a Compensable Delay Event;</p> <p>(e) the discovery of any undisclosed geotechnical condition within the Project site;</p> <p>(f) the discovery of any undisclosed physical conditions within the Project site during the Site Validation Period;</p>

	<ul style="list-style-type: none"> (g) the discovery of any undisclosed endangered species within the Project site; (h) the discovery of any undisclosed archaeological remains within the Project site; (i) the discovery of any undisclosed hazardous environmental conditions within the Project site; (j) the discovery of any undisclosed utility within the Project Site during the Site Validation Period; and (k) the issuance of any preliminary or permanent injunction or temporary restraining order or other similar order, legal restraint or prohibition by a governmental entity of competent jurisdiction under applicable law that materially and adversely affects the Port Authority's or the Design-Builder's performance under the DBA.
Force Majeure Event	<p>The occurrence of any of the following events after the date of the DBA that directly causes either party (the "Affected Party") to be unable to comply with all or a material part of its obligations under the DBA:</p> <ul style="list-style-type: none"> (a) war, civil war, invasion, violent act of foreign enemy or armed conflict; (b) nuclear, chemical or biological contamination unless the source or cause of the contamination is brought to or near the Project site by the Design-Builder or a Design-Builder Party, or is a result of any breach by the Design-Builder of the terms of the DBA; (c) ionizing radiation unless the source or cause of the ionizing radiation is brought to or near the Project site by the Design-Builder or a Design-Builder Party, or is as a result of any breach by the Design-Builder of the terms of the DBA; and (d) an act of terrorism. <p>Neither party will be entitled to bring a claim for a breach of obligations under the DBA by the other party or incur any liability to the other party for any losses or damages incurred by that other party if a Force Majeure Event occurs and the Affected Party is prevented from carrying out its obligations by that Force Majeure Event.</p>

Change in Law	<p>The introduction or repeal, replacement (in whole or in part) of, the amendment, alteration or modification to, or the change in interpretation of (in each case including, to the extent applicable, by retroactive effect), any applicable laws, applicable standards, environmental requirements, practices or guidelines issued or published by any governmental entity that occur at any time after the setting date and that are either:</p> <p>(a) binding on the Design-Builder; or</p> <p>(b) if not binding on the Design-Builder, are both (i) typically complied with in the construction industries and (ii) necessary in order to comply with best management practice.</p> <p>excludes any introduction, repeal, amendment, alteration, modification or change in interpretation of any applicable law, standards, practices or guidelines that is pending, passed or adopted, but not yet effective, as of the setting date.</p>
EVENTS OF DEFAULT	
Design-Builder Defaults	<p>The Port Authority will be entitled to terminate the DBA, subject to various cure periods, for several market-standard events of default. Failure to achieve Substantial Completion by the Substantial Completion Milestone Completion Deadline will be deemed a Design-Builder default and entitle the Port Authority to terminate the DBA.</p>
BUSINESS RISKS	
Indemnification	<p>The Design-Builder will be required to release, defend, indemnify and hold harmless the Port Authority, the City of New York, any other entity required in the DBA, and their respective Commissioners, officers, employees, agents and authorized representatives on demand from and against any and all liability for losses with respect to:</p> <p>(a) death, sickness and bodily injury;</p> <p>(b) loss of or damage to tangible property;</p> <p>(c) any claim or assertion by any other developer or contractor that any Design-Builder Party interfered with or hindered the progress or completion of work being performed by the other contractor or developer, or failed to cooperate reasonably with the other developer or</p>

	<p>contractor, so as to cause inconvenience, disruption, delay or loss;</p> <p>(d) any payments of taxes relating to the Design-Builder's income or other taxes required to be paid by the Design-Builder without reimbursement hereunder, or non-payment of amounts due to the Design-Builder or any Design-Builder Party;</p> <p>(e) any failure by the Design-Builder to comply with, observe or perform any of the covenants, obligations, agreements, terms or conditions of the DBA or the other Contract Documents, or any breach by Design-Builder of its representations or warranties;</p> <p>(f) any claim of errors, inconsistencies, nonconformance, defects or deficiencies in the Work;</p> <p>(g) any violation of any applicable law or applicable standard by the Design-Builder or any Design-Builder Party; or</p> <p>(h) non-payment of amounts due under a Subcontract at any-tier as a result of furnishing materials or services to Design-Builder or any of its Subcontractors in connection with the Work to the extent that the Port Authority has paid the Design-Builder all applicable undisputed amounts then due and payable from the Port Authority to the Design-Builder,</p> <p>in each case, to the extent arising out of, or in consequence of, any breach of the DBA by the Design-Builder or any negligence of the Design-Builder or any Design-Builder Party.</p>
OTHER CONTRACT PROVISIONS	
Minority and Women-owned Business Enterprise Provisions	<p>The Design-Builder must, and must require its Subcontractors to, use every good faith effort to provide for meaningful participation by Minority Business Enterprises and Women-owned Business Enterprises in the Work in accordance with the public policy requirements of the DBA.</p> <p>The Design-Builder and each of its Subcontractors must appoint an executive of its company to assume the responsibility for implementing the minority owned business enterprises and women-owned business enterprise participation goals, which are:</p>

	20% for minority owned business enterprises and 10% for women-owned business enterprises, respectively.
Subcontracting	<p>The Design-Builder will be required to subcontract portions of the Work only to Subcontractors that have been approved by the Port Authority in writing. The Port Authority may grant its approval subject to reasonable conditions.</p> <p>The Port Authority may rescind its approval of a Subcontractor if the Subcontractor fails to perform its Work in accordance with the DBA, in which case the Design-Builder must perform the Work itself or through other approved Subcontractors.</p> <p>The Design-Builder must retain or cause to be retained only Subcontractors that are qualified, experienced and capable of performing the portion of Work to be performed by that Subcontractor at least in accordance with best management practice.</p> <p>The Design-Builder will be fully responsible under the DBA for the acts and omissions of all Subcontractors performing any work or services in relation to the Work, as if they were the acts and omissions of the Design-Builder. All Subcontractors identified in the SOQ must be carried-forward as the Subcontractors performing the Work under the DBA, except where expressly authorized to by the Port Authority for good cause.</p>
Key Personnel and Subcontractors	<p>The Design-Builder must retain, employ and utilize (or where applicable, must ensure that the relevant Key Subcontractor retains, employs and utilizes) the individuals specifically listed as Key Personnel (or any replacements approved) to fill the corresponding positions until all responsibilities of that position have been completed. All Key Personnel identified in the SOQ must be carried-forward as the Subcontractors performing the Work under the DBA, except where authorized by the Port Authority due to certain specified uncontrollable life events, (e.g. death, injury, relocation, termination, etc.)</p>