

REQUEST FOR QUALIFICATIONS

FORTHE

WORLD TRADE CENTER

SALT DAMAGE REMEDIATION PROGRAM

THROUGH A

DESIGN-BUILD AGREEMENT

MARCH 26, 2021

**THE PORT AUTHORITY OF NEW YORK & NEW JERSEY
4 WORLD TRADE CENTER | 150 GREENWICH STREET
NEW YORK, NY 10007**

RFQ TITLE	<p>The title of this RFQ is:</p> <p>Request for Qualifications for the WTC Salt Damage Remediation Program through a Design-Build Agreement RFQ # 6000000267.</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 April 30, 2021.</p>
SOQ SUBMITTAL LOCATION	<p>The Port Authority has transitioned to an entirely digital submission process for the receipt of proposals in response to RFQs. SOQs must be emailed to bidrfpsubmittal@panynj.gov</p>
INDUSTRY BRIEFING	<p>An Industry Breifing will be scheduled. Please check our website https://www.panynj.gov/port-authority/en/business-opportunities/solicitations-advertisements/alternate-project-delivery.html for additional information.</p>

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- 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, 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.

2. THE PROCUREMENT PROCESS

2.1 Summary of the Procurement Process

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

- 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	
RFQ documents issued publicly	March 26, 2021
SOQ Due Date	2:00 PM EST on April 30, 2021
Short-List Notified	Week of May 24, 2021
RFP Phase	
RFP Issued to Proposers (Short-List Only)	Week of May 24, 2021
One or more Collaborative Dialogue Meetings with each Proposers	June/July 2021
Proposal Due Date	Week of August 2, 2021
Proposal Evaluation Best Value Determination	Week of August 30, 2021
Agreement Date – Notice to Proceed	September 2021

2.3 Request for Qualifications (RFQ) 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:

- Qualification and experience of Key Personnel
- A Proposer’s approach to meeting the Project’s goals, objectives, performance criteria technical requirements
- Overall technical merit of the Proposer’s technical proposal
- A Proposer’s quality control and management plans
- Proposed Project baseline schedule
- Proposer preliminary Disadvantaged Business Enterprise (DBE) utilization plan
- The proposed price relative to the technical solution offered
- Any material changes to the Proposer’s team (component Design-Builder Parties) or financial capacity
- 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

A stipend will not be offered for this Project.

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, or 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 submit their SOQs to the SOQ Submission Location identified in Section 3.8 below. 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

The Port Authority has transitioned to an entirely digital submission process for the receipt of proposals in response to RFQs. Your Submission must be emailed to bidrfpsubmittal@panynj.gov in sufficient time so that the Authority receives it no later than the SOQ Due Date.

Respondents are advised that their digital submittal must be in readable format, either Microsoft Word or Adobe PDF.

The subject line of the email should include the RFQ# and title. The body of the email should include contract information of the sender, as well as a description of the contents of the email. This email address is solely for submissions, and as such, it should not be used for any other sort of communication. Any questions or other communication shall be through the designation Contact Person.

Respondents should note that there is a limit to the total size of attachments per email that can be received by the Port Authority designated email account. That limit is 100MB.

Respondents internal networks may have limits on the size of email they can send. Therefore, it is incumbent upon the Respondents to determine ahead of time that the file(s) being submitted can both be transmitted by their systems and accepted by the Port Authority systems. If transmissions exceed these limits, the Port Authority will accept Submissions in multiple emails, provided they are all received by the specified Due Date/time and all emails must include the RFQ# and title. Under this circumstance, Respondents should note in the description of the email that the Submissions will be arriving in multiple parts and include in the subject line the total number of components and which component, of the total, the particular transmission represents. Late submissions may be rejected.

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 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 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;
- (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) Can demonstrate its understanding and commitment to meeting and/or exceeding the DBE goals;
- (e) Demonstrate a knowledge and understanding of the specific management and technical 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

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.
- (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. A Performance and Payment Bond for the amount of the contract will be required from a surety company, as indicated in Appendix B, DBA Key Terms, whose name appears on the current list of the Treasury Department of the United States as acceptable as a surety upon federal contracts.
- (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.
- (e) **Background Qualification Questionnaire Package (BQQP)**

This RFQ requires the Respondents to complete a BQQP as part of their SOQ. In addition, Respondents will also be required to ensure that their respective subcontractors, subconsultants, of all tiers, also complete the BQQPs.

The BQQP may be downloaded at: <http://www.panynj.gov/inspector-general/inspector-general-programs.html>. Please follow submittal instructions in the BQQ package on the website.

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 as described in Form D and in Form E of the SOQ Template (Appendix C).
 - (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 projects
- (iv) Past performance evaluation. In accordance with the Authority's "Performance Evaluation for Construction Contractor Source Selection Policy," which can be found at <https://www.panynj.gov/business-opportunities/become-vendor.html>, Respondents should be aware that we will consider any Respondent's Unsatisfactory or Marginal Performance Evaluation as an important factor in determining whether the Respondent is deemed qualified.
- (v) 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.
- (vi) Record of meeting or exceeding DBE participation goals generally and on Similar Projects

(b) **Project Understanding and Approach:**

- (i) Respondent's proposed organization and project team structure, for appropriateness for the successful performance of the Work required to deliver the Project
- (ii) Respondents demonstrated understanding of design-build project delivery
- (iii) Work to be self-performed by the Principal Participants vs. Work to be subcontracted
- (iv) 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 order of importance:

- (a) Respondent Team members' Experience

(b) Project Understanding and Approach

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. DBE PARTICIPATION

The Port Authority is committed to carrying out all of the DBE requirements of Title 49, Code of Federal Regulations Part 26, as amended from time to time. The Port Authority's policy is to ensure nondiscrimination in the award and administration of all Port Authority contracts. It is the Port Authority's intention to create a level playing field on which DBEs can compete fairly for federal funded contracts. The Port Authority encourages and expects Teams to pursue subcontracting opportunities with DBE firms in the ordinary course of its business/teaming strategies at all levels/phases of the Project. The details of any creative approaches or strategies will be required during the RFP process.

5.1 Participation Goals

This project has a DBE goal of 15%

6. 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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7. CERTIFICATION REQUIREMENTS

The Design-Build Agreement contemplated by this RFQ and subsequent RFP will be funded in part by the Federal Transit Administration (FTA) and will be subject to all the applicable federal requirements. Teams submitting proposals in response to the RFP will be required to submit certification of compliance with the following:

- Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion, Lower Tier Covered Transactions.
- Davis Bacon and Copeland Acts
- Buy America
- Certification Regarding Lobbying

8. 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.
Best Value	Is defined in Section 2.4 of this RFQ.
BIM	Building Information Modeling.
Categorical Exclusion (CATEX)	The categorical exclusion issued by the Federal Transit Administration for the Project under the National Environmental Policy Act.
Change in Law	Is defined in the Summary of DBA Key Commercial Terms (Appendix B).
Compensable Delay Event	Is defined in the Summary of DBA Key Commercial Terms (Appendix B).
Completion Milestone	Is defined in 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 in the Summary of DBA Key Commercial Terms (Appendix B).
Contract Price	Is defined in the Summary of DBA Key Commercial Terms (Appendix B).
Delay Event	Is defined in the Summary of DBA Key Commercial Terms (Appendix B).
Demolition Completion	Is defined in 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 in the 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.
FTA	Federal Transit Administration
Force Majeure Event	Is defined in the Summary of DBA Key Commercial Terms (Appendix B).
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.
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 2.3.
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, and Key Subcontractors.
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	Has the meaning set forth in Section 1.6 of the Project Data Sheet.
Site Validation Period	Is defined in 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
World Trade Center or WTC	16-acre site in Lower Manhattan New York City

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

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1. THE PROJECT

1.1 Project Description

The World Trade Center (WTC) Salt Damage Remediation (SDR) Program will provide for design-build services for the remediation and repairs to certain structural concrete and steel components of the World Trade Center's below grade areas that were exposed and damaged by flood waters from Hurricane Sandy.

The Project is located at the World Trade Center Campus in lower Manhattan, New York (EXHIBIT 1). The Port Authority of New York and New Jersey (Port Authority) seeks to repair and remediate the potential detrimental impacts of saltwater exposure in the below-grade levels of the World Trade Center complex, which were under construction during Hurricane Sandy. The objective is to facilitate achieving the 100-year intended service-life.

The work area consists of four locations within the WTC complex, which include critical transportation infrastructures and facilities. These four locations include:

- the PATH Track Levels and North/South Projections within 1 WTC (PATH Track Level)
- the Vehicle Security Center (VSC)
- the Central Fan Plant (CFP)
- the Central Chiller Plant (CCP) (see EXHIBIT 2).

The types of structural elements to be repaired include but are not limited to: anchored steel plates (both vertical and overhead) and reinforced concrete floors, walls, and ceilings (EXHIBIT 3).

Visual inspections, nondestructive evaluation, and laboratory testing have been performed by various parties between late 2015 and early 2021. The findings of these investigations have been reviewed and summarized by WSP USA, acting as a Project Advisor to the Port Authority. Deficiencies in steel-plated concrete, reinforced concrete and other elements have been identified and some conceptual repair procedures have been identified. The list of identified deficiencies is not exhaustive. This detailed information will be made available to shortlisted Respondents. The Design-Builder will be required to perform additional inspections.

The proposed concrete repair procedures aim at preventing oxygen from reaching embedded reinforcement, thereby precluding corrosion. Likewise, the remedial approach for steel plates is designed to provide the intended 100-year service life with normal routine maintenance.

The Design-Builder will be required to furnish all the equipment, machinery, transportation, materials, etc., necessary to implement the mitigating solutions above.

The Design-Builder shall clean up and dispose of all job-related debris in accordance with all federal, state, and local laws, ordinances, and regulations.

All work areas will be operational throughout the project. Therefore, it is imperative for the Design-Builder to maintain an effective continuous coordination with the WTC Operations

team and different property managements in order to maintain safe and secure access to different rooms, machinery, etc. Moreover, as the WTC and work site is active and operational and given the work locations' function as critical infrastructure facilities essential to the operation of public areas and public transit, the project work schedule needs to be flexible to accommodate phased and discontinuous access to work areas, and to avoid disruption to scheduled maintenance. Overnight shift work may be required at times. All work areas need to be kept with a neat and orderly appearance while the project is ongoing.

Some work areas are fenced and are used to store and secure tenants' properties. The Design-Builder will need to coordinate with the tenants and the pertinent property management to temporarily relocate the tenants' properties when repairs are performed in that area.

The WTC SDR project is part of a Federal Transit Administration (FTA) grant and the project has been authorized by the PA Board of Commissioners.

1.2 Project Goals

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

- to mitigate actual and potential corrosion damage caused by saltwater exposure due to storm-surge flooding during Hurricane Sandy and to provide the intended 100-year service life with normal routine maintenance;
- to minimize disruption to the ongoing WTC daily operations-and-maintenance throughout the project area;
- to engage with a Design-Build entity that provides a single point of responsibility for the progression and successful completion of the contract; and
- to achieve timely completion of the project.

The selected firm will be expected to have available staff to begin design and planning work immediately after NTP, to commence repair work as soon as practical, and to complete the work on schedule.

1.3 Substantial Completion Requirement

The design-build contract is expected to begin in the 4th Quarter 2021. The planned date for substantial completion of the SDR project is by the end of 2024.

1.4 Project Contract Value

The estimated contract price for the Project is estimated to be approximately \$20 million - \$30 million

1.5 Project Funding

This project is funded by the Federal Transit Administration. Respondents will be required to comply with all applicable federal requirements.

1.6 Project Scope Framework

Summary - The Design-Builder will be responsible for all Work necessary to deliver, on-time and on-budget the WTC Salt Damage Remediation (SDR) Program, unless stated otherwise in the RFP documents.

The Design-Builder's scope of Work for the Project generally includes planning, design, and construction of remedial solutions to mitigate the effects of saltwater infiltration. These solutions include but are not limited to:

- Reinforced Concrete Elements:
 - Epoxy injection and/or vacuum impregnation of cracks exceeding 0.012-in in width
 - Applying an epoxy overcoat to the concrete floors and potentially removing the existing coatings
 - Applying an elastomeric coating to concrete walls and ceilings
 - Replacing the exposed corroded conduit stub-ups and anchors
 - Miscellaneous repairs
- Steel-Plated Concrete Walls and Ceilings:
 - Abrasion blasting of the existing steel plates
 - Welding new plates to the bottom four-foot of the existing plates experiencing loss of cross-section
 - Painting new plate and repainting the existing plates
 - Installing new anchor bolts
 - Filling the joints between the steel plates
 - Filling the construction access holes in the plates
 - Sealing the backside of the plates (steel-concrete interface)

1.7 Similar Project

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

- The planning, design, and construction of a project that includes one or more of the repair methods described in the Project Scope Framework, above.
- Repairs to reinforced concrete walls, floors and ceilings, including cracks, honeycombing and spalling.
- Repairs to vertical steel plates.
- A single project requiring quantities and complexities similar to those required for the Work of this Project

The Port Authority will consider multiple projects that, in aggregate, demonstrate that the Respondent/Proposer has the required experience in the anticipated techniques, to be equivalent to a “Similar Project”. Anticipated repair techniques are listed above in Section 1.6.

The Design-Builder will be required to provide personnel to perform the Work who have experience in the successful repair of structures using the applicable methods, materials and equipment, and current applicable certification.

1.8 Project Stakeholders

There are no other external agency stakeholders. All work will be performed within the WTC below grade areas.

Coordination with WTC Operations staff and the Durst Organization will be addressed by the Port Authority.

The FTA will have oversight of SDR project activities under terms of the SDR grant agreement with the Port Authority.

1.9 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:

- WSP USA, Inc
- WSP USA Buildings, Inc
- Accu-cost Construction Consultants, Inc.
- Echem Consultants, LLC
- Junma Engineering, PLLC
- Olson Engineering, Inc
- Youssef Hashash (Consultant)
- Ravi Ranade (Consultant)
- Casimir Bognacki (Consultant)
- Pablo Lopez (Consultant)

1.10 Environmental Status

There are no additional environmental process requirements – all work within the SDR scope is approved to proceed pursuant to a Categorical Exclusion for repair and rehabilitation work at the WTC.

1.11 Disadvantaged Business Enterprise (DBE) Participation Goal

The DBE participation goal for this project is 15%.

1.12 Key Subcontractors

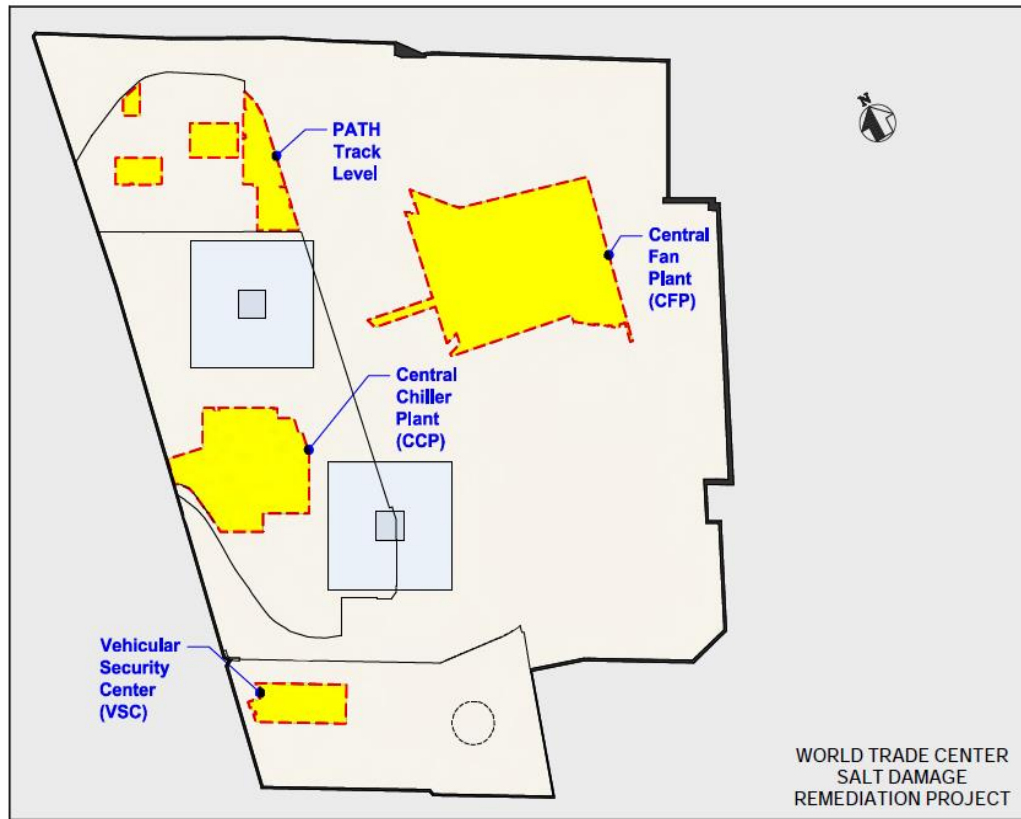
Any Subcontractor to the Design-Builder that is primarily responsible for performing the following services will be deemed a “Key Subcontractor” and must be identified within the SOQ, as required by the RFQ and SOQ Form.

- Professional Engineering Firm, authorized to provide services in the State of New York, that will inspect the damages, evaluate, and design repairs, prepare the final design packages and act as the Engineer of Record for the project.
- Any other Subcontractor that is performing portions of the work greater than 20% shall be identified.
- Required Independent Quality Assurance Inspection and Materials Quality Testing firm. The Independent Subcontractor to the Design-Builder that is primarily responsible for performing the quality assurance inspection and materials quality testing, documentation and record keeping.

The Design-Builder will be required to have as part of the Design-Build Team a Professional Engineering Firm to perform Construction Inspection and a Materials Testing Firm or Laboratory to sample and test materials as required by the project specifications. The Professional Engineering Firm performing Construction Inspection and the Materials Testing Firm or Laboratory may be the same company or separate companies. In either case, the Professional Engineering Firm performing Construction Inspection and the Materials Testing Firm or Laboratory must be independent of the Designer(s), Constructor(s) and any of the Principal Participants or any party with an equity interest, that are included in the Respondents proposed team.

2. EXHIBITS

2.1 EXHIBIT 1 – PROJECT LOCATION



PLAN OF SCOPE AREAS
WITHIN LOWEST LEVEL OF WTC SUBGRADE

2.2 EXHIBIT 2 – GENERAL WORK AREAS

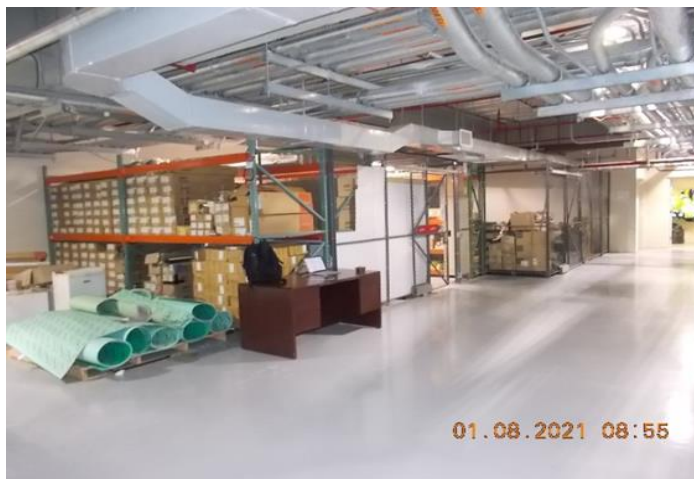
a



b



c



d



Figure 1. Representative photos of the four work locations: (a) PATH track level, (b) CFP, (c) CCP, (d) VSC

2.3 EXHIBIT 3 – EXISTING LOCATIONS



Figure 1. Representative condition of steel plates in 1 WTC, PATH track level



Figure 2. Representative condition of steel plates (walls) in CFP



Figure 3. Representative condition of steel plates (ceiling) in CFP



Figure 4. Representative condition of cracks in elevated slabs



Figure 5. Representative condition of cracks in elevated slabs (underside)

APPENDIX B

WTC SALT DAMAGE REMEDIATION PROGRAM

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.

CONTRACT 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 for the amount of the contract price and expire</p>

	concurrently with the expiration of either final completion or expiration of the warranty period. 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, 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.
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"), as further described in the DBA.</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</p>

	<p>summarized in the Project Data Sheet to the RFQ), so as to achieve Substantial Completion and Final Completion by the applicable Completion Milestone Deadlines set out in the Project schedule.</p> <p>The Lead Contractor will be required to self-perform at least twenty percent (20%) of the Construction Work, as further described in the DBA.</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 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; (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 (iii) all Project Sites will be restored to a condition that is equal to or better than that existing immediately prior to mobilization by the Design-Builder, including (a) the removal of dust, dirt, debris, temporary markings and Design-Builder's materials and equipment; (b) restoration of enclosures, fixtures, and other elements damaged or temporarily removed or relocated by the Design-Builder, (c) clearing of all drain lines to a free-flowing state regardless of which party may have fouled such lines. Design-Builder shall accompany WTCC Operations in a final walkthrough at the

	<p>completion of de-mobilization to ensure all Project Sites are acceptable.</p> <p>(iv) 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>
GOVERNMENTAL APPROVALS, ENVIRONMENTAL & PERFORMANCE RISKS	
Environmental Compliance	<p>The Design-Builder will be required to design and construct the Project so that it complies 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.</p>
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 then be required to 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-Builder's 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 DBA.</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; visible walls, floors and ceilings; access and security requirements for deliveries, materials and personnel; handling and storage of hazardous and non-hazardous materials; storage of equipment; existing equipment and facilities to be protected; the existence of obstacles to performing the Work; the availability and presence of utilities for power, water, water disposal or other purposes; ventilation systems; health and safety; sensitivity of fire alarm systems, electrical/mechanical units or occupants of connected spaces to dust or odors; , and the location, ,timing and character of planned maintenance and construction work by others, . Such familiarization shall be based on the documents made available during the RFP phase and a visible inspection of the Project Site and surrounding locations.</p> <p>Accordingly, as described in the definition of Compensable Delay Events, the Port Authority will provide compensation and time relief to the Design-Builder for certain unknown site conditions.</p> <p>If at any time during the performance of the Work, the Design-Builder becomes aware of certain unknown site condition, as further described in the DBA, the Design-Builder may 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 as the</p>

		<p>Design-Builder deems necessary to perform its obligations under the DBA.</p> <p>If the Design-Builder identifies any undisclosed utilities, undisclosed hazardous environmental conditions, or undisclosed physical 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 one continuous forty-five (45) day period from the date that the Port Authority provides the Design-Builder with access to the Project site under the DBA. The Design-Builder will be required to inspect all Project areas during this one Site Validation Period.</p> <p>The Design-Builder will not be entitled to any such 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</p>

	<p>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	<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 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>
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</p>

	<p>timely notice, mitigation, exhaustion of all float, and evidentiary support required in the DBA:</p> <p>(a) an extension to the Completion Milestone Deadlines for one or more Completion Milestones Deadlines, including the Substantial Completion deadline;</p> <p>(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</p> <p>(c) relief from default for failing to perform any Work directly impeded by such Delay Event.</p> <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> <p>(a) a Compensable Delay Event (<i>see definition below</i>);</p> <p>(b) a force majeure event;</p> <p>(c) a Change in Law (<i>see below definition</i>);</p> <p>(d) fire, explosion, tornados, hurricanes, flood, earthquakes, riot and civil commotion;</p> <p>(e) an adverse weather event;</p> <p>(f) any blockade or embargo;</p> <p>(g) any official or unofficial strike, lockout, go-slow or other labor dispute generally affecting the construction industry or a significant sector of it;</p> <p>(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 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</p>
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	<p>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 physical conditions within the Project site during the Site Validation Period;</p> <p>(f) the discovery of any undisclosed hazardous environmental conditions within the Project site;</p> <p>(g) the discovery of any undisclosed utility within the Project Site during the Site Validation Period; and</p> <p>(h) the issuance of any preliminary or permanent injunction or temporary restraining order or other similar order, legal restraint or prohibition by a</p>

	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.
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> <ul style="list-style-type: none"> (i) binding on the Design-Builder; or (j) 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>Change in Law 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	The Port Authority will be entitled to terminate the DBA, subject to various cure periods, for several market-standard events of default.
BUSINESS RISKS	
Indemnification	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 in accordance with Port Authority standard indemnification provisions, as will be further set forth in the Design-Build Agreement.
OTHER CONTRACT PROVISIONS	

Disadvantaged 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 Disadvantaged Business Enterprises (DBE) in the Work in accordance with the public policy requirements of the DBA.</p> <p>The Design-Builder must appoint an executive of its company to assume the responsibility for implementing the DBE participation goals, which are:</p> <p>The DBE participation goal for this project is 15%</p>
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 liable 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 and Key Subcontractors identified in the Proposal must be carried-forward under the DBA, except where authorized by the</p>

	Port Authority due to certain specified uncontrollable life events, (e.g. death, injury, relocation, termination, etc.)
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