

October 23, 2018

SUBJECT: REQUEST FOR PROPOSALS FOR INDEFINITE QUANTITY CONTRACTS FOR PERFORMANCE OF EXPERT PROFESSIONAL CIVIL ENGINEERING SERVICES (AIRFIELD DESIGN) FOR FEDERALLY FUNDED PROJECTS AS REQUESTED DURING 2019 THROUGH 2022 - (RFP #53251)

Dear Sir or Madam:

The Port Authority of New York and New Jersey (the “Authority”) is seeking Proposals in response to this Request for Proposals (“RFP”) from prospective Consultants (also “You,” “Firm,” and “Proposer”) for Indefinite Quantity Contracts (“IQC”) for the Performance of Expert Professional Civil Engineering Services (Airfield Design) (“Services”) for Federally Funded Projects as part of the Engineering Architectural Design Division’s Call-In Program for 2019 through 2022. The Authority reserves the right to extend this Agreement for two (2) additional one (1)-year periods (“Option Periods”). Notification of exercise of said Option Period(s) shall be in writing from the Authority’s representative, with Procurement’s concurrence.

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

The specific Federally Funded scopes of services that may be required have not yet been determined, but will be defined under individual competitive Task Orders. As projects are identified by the Authority, Task Order Proposals will be solicited from firms which have been awarded Agreements under this IQC solicitation, and which will compete for Task Orders on an “as-needed” basis. Upon award of Agreement and subsequent Task Orders, firms will be required to comply with applicable Federal Aviation Administration (“FAA”) requirements.

The Authority anticipates awarding a maximum of ten (10) Agreements to qualified firms. The estimated dollar range of each Task Order that may be awarded is approximately \$10,000.00 to \$1,300,000.00. The proposed Indefinite Quantity Contract (“IQC”) program (“Program”) has an estimated value of \$10,000,000.00.

At the Authority’s discretion, selected Consultants may be required to enter into a new agreement for each of the following three (3) years (2020, 2021, and 2022), in which case, such new agreement(s) shall be identical to this agreement unless otherwise mutually agreed upon by the parties. Subsequent agreements will be sent to the Consultant at the address indicated on page 1 of the Agreement at least thirty (30) days prior to the end of the current term.

I. PROPOSER REQUIREMENTS

The Authority will consider only those firms who are able to demonstrate compliance with the following minimum qualifications requirement(s):

- A. Minimum 10 permanent full time Civil “Paving & Utilities” Engineers.
- B. Minimum 10 completed Aeronautical Aprons, Runways & Taxiway projects as prime.

- C. Partner/Principal(s) of firm must be a licensed P.E. in the State of New York and New Jersey.

A determination that a Proposer meets these requirements is no assurance that the Proposer will be selected for performance of the subject services. Firms that do not meet this requirement will not be further considered.

II. PROPOSAL REQUIREMENTS:

To respond to this RFP, the Proposer shall submit a concise Proposal in response to the following basic criteria:

- A. To be acceptable, the Proposal shall be no more than 30 pages-single-sided, or 15 pages double-sided, using 12 point or greater font size. The page limit excludes resumes and tab dividers and pertains only to Letters F (Firm Qualifications and Experience), and G (Management Approach), in Section III below. Each resume shall be two-page maximum, single-sided or one-page double-sided, using 12 point or greater font size. The Proposal pages shall be numbered and bound, with "Your Firm Name," and **RFP# 53251** clearly indicated on the cover.
- B. Proposals must be delivered in sealed envelopes or packages. Address the Proposal to: The Port Authority of New York and New Jersey, 4 World Trade Center, 150 Greenwich Street, 21st floor, New York, NY 10007, **Attention: RFP Custodian. Do not address your Proposal to any other name.** You are required to submit one (1) reproducible original and five (5) copies, along with six (6) copies of your Proposal (Technical only) on compact disc (CD) for review. In case of conflict, the reproducible original of the Proposal shall take precedence over material on the CD.
- C. In each submission to the Authority, including any return address label, information on the CD, and information on the reproducible original and copies of the Proposal, the Proposer shall use its full legal name without abbreviations. Failure to comply with this requirement may lead to delays in contract award and contract payments, which shall be the responsibility of the Proposer.
- D. Your Proposal should be forwarded in sufficient time so that the Authority receives it **no later than 2:00 p.m. on November 27, 2018**. The outermost cover of your submittal must be labeled to include the RFP Number and title as indicated in the "Subject" above. The Authority assumes no responsibility for delays caused by any delivery services.
- E. The Authority will not accept Proposals submitted via electronic mail or fax.
- F. If your Proposal is to be hand-delivered, please note that only individuals with proper identification (e.g. photo identification) will be permitted access to the Authority's offices. Individuals without proper identification will be turned away and their packages not accepted.
- G. There is extensive security at the World Trade Center Site. You must present a valid government-issued photo ID to enter 4 WTC. Individuals without packages or carrying

small packages, envelopes or boxes that can be conveyed by hand or on a hand truck may enter through the lobby. All packages, envelopes and boxes may be subject to additional security screening. There is no parking available at 4 WTC/150 Greenwich Street, and parking in the surrounding area is extremely limited. Express carrier deliveries by commercial vehicles will only be made via vendors approved by Silverstein Properties, the WTC Property Manager, through the Vehicle Security Center (“VSC”). Please note that use of the U.S. Mail does not guarantee delivery to Authority offices by the above listed due date for submittals. Proposers using the U.S. Mail are advised to allow sufficient delivery time to ensure timely receipt of their proposals. Presently, UPS is the only delivery vendor with approved recurring delivery times. UPS makes deliveries to 4 WTC around 9:30 a.m. each day. Please plan your submission accordingly. As additional express carriers may be approved by Silverstein Properties and scheduled for recurring delivery times with the VSC, this information may be updated. Under certain circumstances, a solicitation may allow for a commercial vehicle to be approved to make a delivery in accordance with the VSC procedures. If applicable, the specific solicitation document will include that information. The Port Authority assumes no responsibility for

III. PROPOSAL SUBMISSION REQUIREMENTS:

To respond to this RFP, provide the following information:

- A. In the front of your Proposal, provide a copy of Attachment B (Agreement on Terms of Discussion) signed by an officer of your company. If proposing as a joint venture, each firm in the joint venture must sign a copy of Attachment B.
- B. Provide a complete a copy of Attachment C (Company Profile).
- C. Complete the appropriate Attachment G to document each Proposer Requirement above to demonstrate your compliance with the prerequisite requirements listed in “Proposer Requirements” as noted in Section I.
- D. Include a statement indicating whether the Consultant is proposing as a single entity, or as a joint venture. If a common-law joint venture submits a Proposal, all participants in the joint venture shall be bound jointly and severally and each participant shall execute the Proposal. If a single entity proposer cannot demonstrate that it meets all of the referenced qualifications, then the single entity proposer may, with others, form a joint venture and request that the joint venture be deemed to be the Proposer (i.e. members of the joint venture may meet the qualification requirement collectively). If the Proposer is a joint venture, the joint venture’s Proposal shall contain an executed teaming agreement, or alternatively, if the entities making up the joint venture proposer have not executed a teaming agreement, the joint venture’s proposal shall contain a summary of key terms of the anticipated agreement. If the joint venture proposer is a consortium, partnership or any other form of a joint venture, or an association that is not a legal entity, the Proposal shall include a letter signed by each member indicating a willingness to accept joint and several liability until the point at which a corporation, limited liability company or other form of legal entity is formed for the purposes of undertaking the Agreement.
- E. Staff Qualification and Experience

Resumes, including technical qualifications, of all full-time architectural/engineering and technical personnel of your firm, who will be assigned to perform the requested services upon issuance of Task Order awards.

F. Firm Qualifications and Experience

Identify the experience of your firm in providing services similar to those contemplated herein. Identify comparable services performed during the last three (3) years, owners, contact information (for verification purposes), and indicate whether said projects were completed on schedule and within budget.

G. Management Approach

Submit a detailed description of the proposed management approach to be taken for the administration of the IQC Agreement and the work, which will be awarded under each Task Order covering the tasks listed in Attachment A, entitled "Scope of Services". In support, the Proposer shall also provide:

1. A detailed Organization Chart.
2. A tracking system for deliverables, controlling costs, and meeting management (organizing meetings, determining agendas, writing and distributing meeting minutes, and monitoring the progress of action items agreed upon in meetings, etc.).
3. Procedures for keeping the Authority informed of issues and progress during performance of the project.
4. Approach to Quality Control/Quality Assurance.

H. Financial Information

The Proposer must demonstrate that it is financially capable of performing the Agreement resulting from this RFP. The determination of the Proposer's financial qualifications and ability to perform this Agreement will be in the sole discretion of the Port Authority. The Proposer shall submit, with its Proposal, the following:

- (1) Certified financial statements, including applicable notes, reflecting the Proposer's assets, liabilities, net worth, revenues, expenses, profit or loss and cash flow for the most recent calendar year or the Proposer's most recent fiscal year.
- (2) Where the certified financial statements in (1) above are not available, then reviewed statements from an independent Certified Public Accountant setting forth the aforementioned information shall be provided.

Where the statements submitted pursuant to subparagraphs (1) and (2) aforementioned do not cover a period which includes a date not more than forty-five (45) days prior to the Proposal Due Date, then the Proposer shall also submit a statement in writing, signed by an executive officer or his/her designee, that the present financial condition of the Proposer is at least as good as that shown on the statements submitted.

- (3) A statement of work which the Proposer has on hand, including any work on which a bid and/or Proposal has been submitted, containing a description of the work, the annual dollar value, the location by City and State, the current percentage of

completion, the expected date for completion, and the name of an individual most familiar with the Proposer's work on these jobs.

- (4) The Proposer's Federal Employer Identification Number (i.e., the number assigned to firms by the Federal Government for tax purposes), the Proposer's Dun and Bradstreet number, if any, the name of any credit service to which the Proposer furnished information and the number, if any, assigned by such service to the Proposer's account.

- I. Provide a complete list of your firm's affiliates.
- J. If the Proposer or any employee, agent or subcontractor of the Proposer may have, or may give the appearance of a possible conflict of interest, the Proposer shall include in its proposal a statement indicating the nature of the conflict. The Authority reserves the right to disqualify the Proposer if, in the Authority's sole discretion, any interest disclosed from any source could create a conflict of interest or give the appearance of a conflict of interest. The Authority's determination regarding any questions of conflict of interest will be final.
- K. The Proposer is expected to agree with the Port Authority Standard Agreement (Exhibit II) and its terms and conditions. You should therefore not make any changes in this Agreement, nor restate any of its provisions in your Proposal or supporting material. However, if the Proposer has any specific exceptions, such exceptions should be set forth in a separate letter included with its response to this RFP, showing any proposed language modifications in track changes format. The Authority is under no obligation to entertain or accept any such specific exceptions. Exceptions raised at a time subsequent to proposal submission will not be accepted.
- L. Code of Ethics for Port Authority Vendors
The Proposer's attention is directed to the Port Authority's "Code of Ethics for Port Authority Vendors." Vendors must certify in writing that they will comply with every aspect of this Code. The Proposer should submit an executed Compliance Certification with their Proposal. The Compliance Certification, once executed, will be a material and integral part of any Agreement resulting from this solicitation. The Code of Ethics and the Compliance Certification can be found on the Authority's website at <https://www.panynj.gov/business-opportunities/become-vendor.html>.

M. DBE PARTICIPATION

This Agreement is subject to the United States Department of Transportation regulations on Disadvantaged Business Enterprises (DBEs) contained in Part 26 of Title 49 of the Code of Federal Regulations.

In accordance with Attachment D, the Proposer shall submit: 1) the completed DBE Participation Plan and Affirmation Statement (Appendix A2) for each DBE firm it intends to use on this Contract and, 2) the completed Information on Solicited Firms form (Appendix A4), listing every firm that provided a quotation to the bidder for any subcontract to be performed under this Contract, whether the firms are DBE certified and whether the firms' quotes were included in the final Proposal.

N. FEDERAL SUBMISSION REQUIREMENTS

The services may be funded in whole or in part by the FAA. As a result, the Proposer's attention is direct to the federal contract provisions set forth as Exhibit I of the attached Agreement.

Proposers must complete the following certifications and forms, from Exhibits I and submit them with their proposal.

A. FAA SUBMISSION REQUIREMENTS

- 1. CERTIFICATION REGARDING LOBBYING PURSUANT TO 31 U.S.C. 1352.**
- 2. STANDARD FORM LLL - DISCLOSURE OF LOBBYING ACTIVITIES -**
Complete this form, to disclose lobbying activities pursuant to 31 U.S.C. 1352. **If required, this certification must be submitted with the Proposals.**

IV. PRICING AND COMPENSATION

This IQC Solicitation is a qualifications-based selection in accordance with the Brooks Act. Therefore, cost proposals are not required at this time. Selected Consultants who are awarded an IQC Agreement will be requested to submit cost proposals in response to Task Order Requests for Proposals.

V. BACKGROUND QUALIFICATIONS QUESTIONNAIRE

The Proposer shall submit a completed Background Qualifications Questionnaire ("BQQ") for itself, any subcontractor, sub-consultant or vendor that the Proposer, at the time of Proposal submission, has contracted to perform any of the work under Attachment A. Proposers are strongly encouraged to provide this information in advance of the Proposal Due Date.

This document and instructions for submitting the completed BQQ directly to the Authority's Office of Inspector General can be obtained at the Authority's website through the following link:

<http://www.panynj.gov/inspector-general/inspector-general-programs.html>

VI. ORAL PRESENTATIONS

After review of all Proposal submissions, an oral presentation to the Selection Committee and others, as appropriate, may be requested by the Authority. It should be noted that Proposers selected to make presentations may be given only short advance notice. Presentations will be limited to thirty (30) minutes and should include the material

contained in their Proposal. The presentation will be followed by an approximately thirty (30) minute long question and answer session. It will be at the Proposer's discretion as to who leads the oral presentation; however, the lead presenter shall be supported by no more than five (5) staff members who are proposed to work on this project. Notification of presentation scheduling will be made by e-mail. Please provide the name and email address of the person who should be contacted for presentation scheduling as well as an alternate contact person in the event that the primary contact person is unavailable.

VII. SELECTION PROCESS

1. Master Agreement(s)

Award of IQC Master Agreements will be made following a qualifications-based selection (QBS) method in accordance with the Brooks Act. Therefore, cost proposals are not required at this time. Selected Consultant/Firm(s) who are awarded an IQC Master Agreement will be requested to submit technical and cost proposals when individual Task Order requests for proposals are solicited. The IQC Master Agreement selection shall take into consideration the following technical selection criteria, as listed in relative order of importance. After consideration of these factors, the Authority may enter into an agreement with the Consultant/Firm(s) deemed best qualified to perform the required services. The Authority's technical criteria are:

- A. **Staff Qualifications and experience** of the proposed staff, including subconsultants, performing services hereunder;
- B. **Firm experience**, including the quality of similar services provided to others, and the demonstrated ability to complete the services in accordance with the project schedule; and.
- C. **Management Approach** for the performance of the contemplated services.

2. Individual Task Orders

Individual Task Order proposals will be evaluated through a qualifications-based selection (QBS) method in accordance with the Brooks Act. The review, rating and ranking of proposals will be based upon the technical selection criteria as indicated below. The Authority will then evaluate the cost proposal submitted by the highest rated proposer. If an agreement with the highest rated firm cannot be reached, the Authority may elect to commence negotiations with the next highest rated qualified firm, and so on, until an agreement is reached. The Authority's technical criteria, as listed in relative order of importance, are:

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

VIII. ADDITIONAL INFORMATION:

The Port Authority embraces a workplace where the values of diversity and inclusion support varying perspectives and backgrounds to produce a richer environment.

The Port Authority expects all our consultants, contractors and vendors, to demonstrate a similar commitment, and undertake every effort to ensure their project teams represent the diverse makeup of the communities in and around the Port District.

Proposers are advised that additional vendor information, including, but not limited to forms, documents and other related information, may be found on the Authority website at <http://www.panynj.gov/business-opportunities/become-vendor.html>. Additionally, Proposers are encouraged to periodically access the Authority website at <http://www.panynj.gov/business-opportunities/bid-proposal-advertisements.html?tabnum=6> for RFP updates and addenda.

Contracts awarded as a result of this RFP may be funded in whole or in part by the Federal Aviation Administration ("FAA"). Accordingly, all Proposers will be obligated to comply with all corresponding federal laws, regulations or other conditions applicable to the federal financing source, this includes the applicable DBE goals. Individual task orders when issued against this agreement will indicate DBE goal.

See Attachment D to this RFP letter for the DBE Program Requirements.

If your firm is selected for performance of the subject services, the Agreement you will be asked to sign, will include clauses entitled "Certification of No Investigation (Criminal Or Civil Anti-Trust), Indictment, Conviction, Debarment, Suspension, Disqualification and Disclosure Of Other Information" And "Non-Collusive Proposing And Code Of Ethics Certification; Certification Of No Solicitation Based On Commission, Percentage, Brokerage, Contingent Or Other Fees." By submitting a Proposal, the Consultant shall be deemed to have made the certifications contained therein unless said Consultant submits a statement with its Proposal explaining why any such certification(s) cannot be made. Such a submission shall be submitted in a separate envelope along with your Proposal, clearly marked "CERTIFICATION STATEMENT."

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

After a review of all Proposals received, the Authority will forward two (2) copies of the Agreement to the selected firm(s), which must sign and return both copies. Signature shall be

by a corporate officer. The return of one copy executed by the Authority will effectuate the Agreement.

Should you have any questions, please contact Ms. Allison Agliardo, Operations Manager, by email at aagliardo@panynj.gov. All such emails must have “**RFP 53251**” in the subject line. The Authority must receive all questions no later than **4:00 P.M.**, fourteen (14) calendar days before the RFP due date. Neither Ms. Agliardo nor any other employee of the Authority is authorized to interpret the provisions of this RFP or accompanying documents or give additional information as to their requirements. If interpretation or additional information is required, it will be communicated by written addendum issued by the undersigned and such writing shall form a part of this RFP, or the accompanying documents, as appropriate.

Proposal preparation costs are not reimbursable by the Authority, and the Authority shall have no obligation to a firm except under a duly authorized agreement executed by the Authority. No rights accrue to any Proposer except under a duly authorized agreement for performance of the specified services.

The Authority reserves the right, in its sole and absolute discretion, to reject all Proposals, to undertake discussions and modifications with one or more Consultants, to waive defects in Proposals, and to proceed with that Proposal or modified Proposal, if any, which in its judgment will, under all the circumstances, best serve the public interest.

Sincerely,

Joann Spirito
Manager, Federal Procurement & Compliance
Procurement Department

ATTACHMENTS:

Attachment A: Scope of Work
Attachment A1: Authority’s Limited English Proficiency (LEP) Plan 2015
Attachment B: Agreement on Terms of Discussion
Attachment C: Company Profile
Attachment D: Disadvantaged Business Enterprise (DBE) Program
 Appendix A1: Professional, Technical and Advisory Services DBE Goal Statement
 Appendix A2: Professional Technical and Advisory Services DBE Participation Plan and Affirmation Statement
 Appendix A3: Modified Professional, Technical & Advisory Services DBE Participation Plan and Affirmation Statement
Attachment E: Sample Staffing Plan
Attachment F: Insurance Requirements
Attachment G: Proposer Requirements
Exhibit I: Federal Aviation Administration (FAA) Contract Provisions
Exhibit II: Port Authority Standard Agreement

ATTACHMENT A

SCOPE OF WORK

ATTACHMENT A

PERFORMANCE OF EXPERT PROFESSIONAL CIVIL ENGINEERING SERVICES (AIRFIELD DESIGN) FOR FEDERALLY FUNDED PROJECTS AS REQUESTED DURING 2019 THROUGH 2022 - (RFP #53251)

I. BACKGROUND

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

The Authority’s facilities also include all of its wholly owned subsidiaries, such as but not limited to The Port Authority Trans-Hudson Corporation (PATH), that is a heavy-rail rapid-transit system, operating 24 hours a day, seven days a week, and serves as a critical link in the New York-New Jersey transportation network. Consultant shall provide services to the Authority and any of its subsidiaries as required by the Authority.

II. SCOPE OF WORK

The services of the Consultant shall generally consist of but are not limited to, preparing engineering designs, contract drawings, technical specifications, and construction cost estimates for a wide variety of new projects, also rehabilitation, restoration and resurfacing projects covering such areas as but not limited to:

A. Civil Airfield Design including pavement, markings, safety area(s) and drainage design for runways, taxiways, and aircraft parking aprons.

B. Electrical Aeronautical Design including approach, runway, taxiway and apron related lighting, Nav aids, and signage.

III. DESCRIPTION OF CONSULTANT’S TASKS

Tasks to be performed by the Consultant may include, but shall not be limited to the following:

A. Studies

B. Field Inspections

- C. Program Development
- D. Project Scoping, Budgeting and Scheduling
- E. Schematic Design
- F. Budget Estimating
- G. Design Development
- H. Contract Drawing Preparation, conforming with PA CADD standards
- I. Detailed Construction Estimating
- J. Technical Specification Preparation
- K. Shop Drawing Review and Approval
- L. Post Award Construction Documents
- M. Drafting and Design Support to be provided at Four World Trade Center, New York, NY.

All work performed by the Consultant including the preparation of documents, reports, drawings, etc. shall be performed and submitted in accordance with a schedule approved by the Authority prior to the performance of services.

When services to be performed by the Consultant include the preparation of Contract Documents, or the performance of Post Award Services, the Consultant shall submit his specific Quality Control/Assurance Program to the Chief Engineer prior to the performance of said services.

When the Consultant has completed preparation of any Contract Documents, or performance of post-award services, submit a letter to the Chief Engineer certifying the Consultant's conformance of the aforementioned Quality Control/Assurance Program.

Except as otherwise noted herein, all designs and preparation of Contract Documents shall conform to Authority standards and to those codes which would be applicable if the Authority were a private corporation and, in case of a conflict, the more stringent requirement shall apply.

IV. CONDITIONS AND PRECAUTIONS

A. General

The Consultant shall immediately inform the Authority of any unsafe condition(s) discovered at any time during the course of this work.

Vehicular and/or pedestrian traffic shall have priority over any and all to the Consultant's operations.

B. Work Areas

The Consultant shall limit his work to the area necessary for the performance of such inspection and shall not interfere with the operation of the facility without first obtaining specific approval from the Authority.

The Consultant shall take steps necessary to ensure the safety of its staff during performance of the work. All Personal Protective Equipment, including, but not limited to, safety shoes, hardhat, and safety vest, shall be worn for all field work. In addition, where necessary, fall protection equipment shall be utilized.

During periods of time when it is not performing operations at the work site, the Consultant shall store all equipment being used for the services in areas designated by the Authority and shall provide all security required for such equipment.

The Consultant shall not permit any objects or pieces of equipment to lie unattended on sidewalks, taxiways, runways, aircraft movement areas, tracks, or structures at any time.

Photographing of the facility buildings and surrounding area is not permitted without approval from the Authority.

C. Work Hours

The consultant shall coordinate its work at the site(s) with the Project Manager, unless otherwise directed by the Authority.

In any case, no work shall be performed at the site on a legal holiday of either the State of New Jersey or the State of New York unless otherwise directed by the Authority.

D. Limited English Proficiency (LEP) Plan

The Authority's LEP Plan 2015, as may be revised, is a part of this Agreement, and all services performed hereunder must be performed in accordance with the LEP Plan.

V. TASK ORDER PROCESS

Upon determining the scope of work for each Task Order, the Authority shall request Brooks Act compliant competitive proposals from all Firms/Consultants holding IQC Master Agreements.

Request for Task Order Proposal:

1. Request for Task Order Proposal - The Authority shall transmit the Scope of Work ("SOW") via a Task Order Request for Proposal ("TRFP") to the Consultants.
2. Task Order Proposals – After receipt of a TRFP, the Consultant is to submit, within the specified time frame, a Technical Proposal and Cost Proposal (**in a separate sealed envelope**) containing the following items of information, in the order listed below, unless otherwise specified in the TRFP:
 - a. A brief description of the proposed services, if requested;
 - b. A listing of the proposed Consultant and subconsultant(s) staff, as appropriate. If any technical personnel have not been previously approved by the Authority, the following minimum background information is to be provided: detailed resume, including name, individual's area of educational background, expertise, qualifications, pertinent experience and Professional Licensure in the State in which work is to be performed;
 - c. If requested, the Task Order Proposal shall include: (a) Technical Proposal, inclusive of a management plan and technical approach; (b) Cost Proposal in a **separate sealed envelope**, inclusive of the number of hours proposed by the Consultant and sub-consultant's technical personnel for the completion of the work as outlined in the

- TRFP Scope of Work, out of pocket expenses necessary to complete the task, and total estimated cost to complete the Task Order. All Cost Proposals shall be submitted pursuant to the Compensation provisions outlined in the IQC Agreement. Each Cost Proposal shall be accompanied by a breakdown of hours and hourly rates for the personnel proposed, as a function of each task/subtask in the RFP. No deviation from the hourly matrix or reallocation of technical salaries will be permitted, unless pre-approved in writing by the Port Authority Manager or his or her designee, on a case-by-case basis; and
- d. The Task Order Proposal shall include a detailed schedule, including all interim submissions and dates.

A. Issuance of Task Order(s):

1. Issuance of Task Orders - After review and evaluation of the Task Order Proposals, the Authority will select the highest rated most qualified consultant. The Authority reserves the right to negotiate any portion of the Consultant's Task Order Proposal. If the Authority is unsuccessful in negotiating a Task Order with the highest rated most qualified Proposer, the Task Order Proposal of the next highest rated most qualified Proposer will be negotiated and so on until an agreement is reached. Once negotiations are complete, a Task Order shall be executed by the Authority and a Notice to Proceed (NTP) shall be issued to the Consultant for the Task Order. The Authority is under no obligation to issue Task Orders to the Consultant and no payment shall be made to the Consultant except for Tasks performed under an executed Task Order. No compensation will be provided for any time, efforts, or costs incurred for proposing, estimating, or negotiations, or for any costs that are not directly related to completing the scope and that are otherwise considered overhead.
2. After the written Notice to Proceed for a Task Order has been issued, the Consultant shall perform and complete the work within the duration specified in the Task Order.
3. During the course of performing the work, the Consultant shall provide weekly accounts of time billed and daily logs for all positions billed to the Task Order, to be reviewed and approved by the Port Authority Manager. Any discrepancies will be mediated by and at the sole discretion of the Authority

VI. Organizational Conflicts of Interest

The Port Authority has determined performance of services under this Agreement could create the potential for a conflict of interest, or an appearance of conflict of interest. Accordingly, performance under certain Task Orders could preclude a firm from proposing on future Authority solicitations as a prime or a sub. Additional information will be provided with such Task Orders.

END SCOPE OF WORK

ATTACHMENT A1

AUTHORITY'S LIMITED ENGLISH PROFICIENCY (LEP) PLAN

2015

Limited English Proficiency (LEP) Plan



Submitted by: The Port Authority of New York
and New Jersey

Government and Community Relations

4/1/2015

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INTRODUCTION

The Port Authority of New York and New Jersey's (Port Authority) Government & Community Relations Department (GOCOR) and Office of Business Diversity and Civil Rights (OBDCR) collaborated to develop this Limited English Proficiency (LEP) Plan. The LEP Plan provides Port Authority staff with guidance to effectively apply LEP requirements and ensure nondiscrimination in the delivery of our programs.

To support its development and ensure consistency with the United States Department of Transportation (DOT) implementing guidance, this LEP Plan, which consists of a four-factor analysis and corresponding language assistance services, describes the needs and use of LEP services. Each Port Authority operating department (Aviation, Port Commerce, Port Authority Trans-Hudson Corporation, Tunnels, Bridges and Terminals Departments) assessed its customer demographics and services to determine its department's customer needs and its LEP responsibilities. The findings were used to compile the information contained in this Plan and are meant to be used as a guide to assist future LEP efforts.

LEP OVERVIEW

As a recipient of Federal Transit Administration (FTA), Federal Highway Administration (FHWA), and Federal Aviation Administration (FAA) funding, the Port Authority, which includes its wholly owned subsidiary, the Port Authority Trans-Hudson Corporation (PATH), takes reasonable steps to ensure compliance with Title VI of the Civil Rights Act of 1964, as amended.

Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d *et seq.* and its implementing regulations provide, among other things, that no person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity that receives federal financial assistance. The Civil Rights Restoration Act of 1987 provided an interpretation of "program and activity" and defined it as all the operations of a department, agency etc. Furthermore, the Supreme Court, in *Lau v. Nichols* 414 U.S. 563 (1974), interpreted Title VI regulations promulgated by the former Department of Health, Education, and Welfare to hold that Title VI prohibits conduct that has a disproportionate effect on LEP persons because such conduct constitutes national origin discrimination.

On August 11, 2000, President Clinton issued Executive Order 13166, entitled "Improving Access to Services for Persons with Limited English Proficiency." Executive Order 13166, reprinted at 65 FR 50123 (August 16, 2000), directs each federal agency to examine the services it provides and develop and implement a system by which LEP persons can meaningfully access those services. Federal agencies were instructed to publish guidance for their respective recipients in order to assist them with their obligations to LEP persons under Title VI. The Executive Order, in the Federal Register/Vol. 65, No. 159 (2000), states that *"Agencies shall ensure that stakeholders, such as LEP persons and their representative organizations, recipients, and other appropriate individuals or entities, have an adequate opportunity to provide input. Agencies will evaluate the particular needs of the LEP persons they and their recipients serve and the burdens of compliance on the agency and its recipients. This input from stakeholders will assist the agencies in developing an approach to ensuring meaningful access by LEP persons that is practical and effective, fiscally responsible, responsive to the particular circumstances of each agency, and can be readily implemented."*

The U.S. Department of Transportation (DOT) published its *Policy Guidance Concerning Recipients' Responsibilities to Limited English Proficiency Persons* in Federal Register/Vol. 70, No. 239, pp. 74087-74100, December 14, 2005 (DOT LEP Guidance). The FTA also published additional LEP guidance in its Circular 4702.1B *Title VI Requirements*

and *Guidelines for Federal Transit Administration Recipients*. Each of the guidance resources noted above requires recipients to develop an LEP Plan consistent with the provisions of Section VII of the DOT LEP Guidance.

DOT LEP Guidance Section IV in part states *“Individuals who do not speak English as their primary language and who have a limited ability to read, write, speak, or understand English can be limited English proficient.”* Language for LEP individuals can be a barrier to accessing important benefits or services, understanding and exercising important rights, or understanding other information provided by federally funded activities and programs.

LEP ANALYSIS GUIDANCE

To determine the most effective mix of language assistance and to target resources appropriately, each department that provides transit service to the public must periodically conduct a four-factor analysis to confirm that its current practices are in line with the needs of persons with LEP.

The four-factor analysis involves four steps:

1. The number and proportion of LEP persons eligible to be served or likely to be encountered by a program, activity, or service of the recipient.
2. The frequency with which LEP individuals come in contact with the program, activity, or service.
3. The nature and importance of the program, activity, or service provided by the recipients to people’s lives.
4. The resources available to the recipient and their costs.

Factor 1: Assess the number and proportion of LEP persons eligible to be served or likely to be encountered by a program, activity, or service.

DOT LEP Guidance Section V (1), states in part that *“The greater the number or proportion of LEP persons from a particular language group served or encountered in the eligible service population, the more likely language services are needed. Ordinarily, persons’ eligible to be served or likely to be directly affected by a recipient’s programs or activities are those who are in fact, served or encountered in the eligible service population. This population will be program-specific, and includes persons who are in the geographic area that is part of the recipient’s service area.”*

Best practices include:

- Examine Port Authority’s prior experiences with LEP individuals.
- Examine the Port Authority’s Planning and Regional Development Department’s Regional Demographics on enet. This internal resource on the Planning Department’s internal website provides demographic information on the pertinent areas relative to Port Authority facilities.
- If need be, further examine Census/American Community Survey (ACS) data.
- Consult local organizations, community organizations, local governments, and religious organizations.

Factor 2: Assess the frequency with which LEP individuals come in contact with the program, activity, or service.

DOT LEP Guidance, Section V (2), states in part that *“Recipients should assess, as accurately as possible, the frequency with which they have or should have contact with LEP individuals from different language groups seeking assistance, as the more frequent the contact, the more likely enhanced language services*

will be needed. The steps that are reasonable for a recipient that serves an LEP person on a one-time basis will be very different than those expected from a recipient that services LEP persons daily.”

Best practices include:

- Survey or other critical user information gathered.
- Telephone data – Incoming Calls – Customer Service Line usage (for example, how many callers select Spanish). What other languages should be included?
- Website statistics – Where bilingual information is present, how many times was it viewed?
- Collect Customer Service Agents and staff feedback.
- Assess LanguageLine details.
- Assess Survey results.
- Review Customer Service LEP assistance requested and provided.

Factor 3: Assess the nature and importance of the program, activity, or service provided by the agency.

DOT LEP Guidance Section V (3) states that *“The more important the activity, information, service or program, or the greater the possible consequences of the contact to the LEP individuals, the more likely language services are needed.”*

Furthermore, DOT LEP Guidance Section V (4) states in part, *“Providing public transportation access to LEP persons is crucial. An LEP person’s inability to utilize effectively public transportation may adversely affect his or her ability to obtain health care, education, or access to employment.”*

Best practices include:

- Ask yourself – What is **vital** to LEP persons to access available services?
- Identify vital documents for written translation. Whether or not a document is vital depends on the importance of the program, information, or services involved and the consequence to the LEP person if the information in question is not accurate or timely.

Vital documents may include: intake forms; applications to participate; customer service; complaint forms; permits; tickets of deficiency notices; emergency transportation information; signs in bus and train stations and airports, notices of public hearings or meetings regarding recipients proposed transportation plans, projects, or changes, and reduction, denial or termination of services or benefits; signs in waiting rooms, reception areas or other initial points of entry; notices advising LEP persons of free language assistance or statements about services and the right to free language assistance in appropriate non-English brochures, booklets, outreach and recruitment information; and other materials routinely disseminated to the public.

LEP.gov notes, “For larger documents, translation of vital information contained within the document will suffice and the documents need not be translated in their entirety.”

Factor 4: Assess the resources available to the recipients and the costs.

DOT LEP Guidance Section V (4) states, *“Recipients should carefully explore the most cost-effective means of delivering competent and accurate language services before limiting services due to resource concerns.”*

“The following practices may reduce resources and cost issues where appropriate: training bilingual staff to act as interpreters and translators, information sharing through industry groups, telephonic and video conferencing interpretation services, translating vital documents posted on Web sites, pooling resources and standardizing documents to reduce translation needs and using qualified translators and interpreters to ensure that documents need not be ‘fixed’ later and that inaccurate interpretations do not cause delay or other costs, centralizing interpreter and translator services to achieve economies of scale, and a formalized use of qualified community volunteers.”

“The correct mix should be based on what is both necessary and reasonable in light of the four factor analysis.”

Best practices include:

- Outline resources available to provide language assistance and overall costs of providing LEP assistance as identified in the four-factor analysis.
- Utilize the Internal Port Authority Order Number 061214 for expenses related to the Title VI Nondiscrimination Program.
- When appropriate, utilize staff across the agency with language skills to supplement our language services at the first point of contact with an LEP individual or group.

SELECTING LANGUAGE ASSISTANCE SERVICES

Recipients may provide language services in either oral or written form. Quality and accuracy of language services is critical.

ORAL LANGUAGE SERVICES (INTERPRETATION)

Interpretation is the act of listening in one language and orally translating it into another language. It is imperative to rely on competent interpreters who have demonstrated their proficiency in the ability to communicate information accurately in English and another language. Interpreters must adhere to their role without deviating into a role as counselor, legal advisor, or other role. When language assistance is needed and is reasonable, it should be provided in a timely manner. Timely means providing assistance at a time and place that avoids the denial of a service or benefit of a program or activity. Options to satisfy this need include hiring or employing bilingual staff at locations where language assistance needs are most often encountered, hiring staff interpreters, contracting for interpreters, using telephone interpreter lines, or using community volunteers where appropriate.

WRITTEN LANGUAGE SERVICES (TRANSLATION)

Translation is the replacement of a written text from one language into an equivalent written text in another language. Translators should understand the expected reading level of the audience and, where appropriate, have fundamental knowledge of the target language group’s vocabulary and phraseology.

What to translate? Examples of materials that may be translated include:

- Emergency transportation information.
- Marking, signs, and packaging for hazardous materials and substances.
- Signs in bus and train stations and in airports.
- Notices of public hearings regarding the Port Authority's (including PATH's) proposed transportation plans, projects, or changes, and reduction, denial, or termination of services or benefits.
- Signs in waiting rooms, reception areas, and other initial points of entry.
- Notices advising LEP persons of free language assistance and language identification cards for staff.
- Applications or instructions on how to participate in Port Authority and PATH programs.
- Complaint and consent forms.

Whether or not a document or the information it solicits is "vital" may depend upon the importance of the program, information, or services involved and the consequence to the LEP person if the information in question is not accurate or timely.

Community organizations may help determine what outreach materials are most helpful if translated. Ethnic media, schools, and religious and community organizations may also assist in communicating messages.

SAFE HARBOR PROVISION

Safe Harbor provisions apply to the translation of written documents only. The DOT considers the following as evidence that the recipient has met its obligation.

1. The recipient provides written language translations of vital documents for each eligible LEP language group that constitutes 5% or 1,000, whichever is less, of the population of persons eligible to be served or likely to be affected by service changes or facility activities; and
2. If there are fewer than 50 persons in a language group that reaches the 5% trigger in 1 above, the recipient does not have to translate vital written materials but must provide notice of the right to receive competent oral interpretation of those written materials, free of costs.

Based on the populations living in proximity to Port Authority facilities and who most frequently utilize the Port Authority's vast network of aviation and maritime facilities, and transportation terminals and services, vital documents are initially considered for translation into Spanish and Chinese. Further, given limitations on the agency's resources and that those populations who most often encounter our facilities and utilize our services fall within the aforementioned LEP populations, we do all possible to ensure that these limited resources are fairly allocated where they are likely to provide the most benefit.

Nonetheless, the Port Authority recognizes the presence of languages other than Spanish and Chinese within the service area that fall under the Safe Harbor provision and as such, regularly assesses LEP needs on a project-by-project basis, utilizing demographic analysis gathered from Census bureau statistics. In addition, Port Authority liaisons from the Government & Community Relations department maintain regular communication with local elected officials and community leaders to ensure the needs of impacted, harder to identify, LEP populations are

considered. The Agency makes a concerted effort, leveraging its finite resources, to address individual requests for the translation of vital documents into languages other than Spanish and Chinese, within a reasonable timeframe.

LANGUAGE ASSISTANCE PLAN

The Port Authority of New York and New Jersey's Language Assistance (LEP) Plan summarizes how the Port Authority addresses the identified needs of the Limited English Proficient populations within the region it serves (Port District).

The Port Authority of New York and New Jersey's Aviation, Tunnels, Bridges and Terminals, Rail Transportation (PATH), and Port Commerce operating departments have a strong understanding of their LEP customer base. Aviation serves an international and diverse regional population. PATH primarily serves residents in local neighboring communities and commuters transferring to PATH stations from other communities within the Northern New Jersey-New York region. The Tunnels, Bridges and Terminals Department (TB&T) serves motorists travelling between New York City and New Jersey utilizing vehicular tunnels and bridges, as well as bus riders to two interstate bus terminals, which serve both local and long-distance travelers. Port Commerce does not provide public transportation; rather, it interfaces with the truck driving population serving marine terminal operators.

In addition to the aforementioned departments, the Port Authority's Office of Government and Community Relations serves as a valuable resource for elected officials, residents, and community organizations and has dedicated staff that liaises between operating departments and the communities to regularly assess their needs. As such, the Port Authority takes an active role in the communities it serves and forges strong relationships with federal, state, and local government officials as well as among community groups and leaders to help ensure that the needs of the LEP population are effectively addressed.

Overall, based on Census data, surveys, and historical information, the most commonly spoken LEP language in the Port Authority service area and at transportation facilities is overwhelmingly Spanish, followed by Chinese at a distant second. Recognizing that these languages can vary based on a project area, as matters of practice, needs are regularly assessed and an outreach strategy is defined on a project-by-project basis. Once a project area has been established, should additional demographic data analysis indicate that the impacted population includes other LEP populations, efforts will be made to provide outreach to those specific LEP populations accordingly.

RESULTS OF THE FOUR-FACTOR ANALYSIS

Factor 1 Results:

Assess the number and proportion of LEP persons served or encountered in the eligible service population

The Port Authority's eighteen (18)-county service area within the States of New York and New Jersey include New York, Kings, Queens, Richmond, Bronx, Rockland, Suffolk, Nassau, and Westchester Counties in New York and Bergen, Essex, Hudson, Middlesex, Monmouth, Morris, Passaic, Somerset, and Union Counties in New Jersey. A separate analysis was conducted of the three-county area in which our PATH rail transit service operates and in which the PATH stations are located: New York County in New York and Essex and Hudson Counties in New Jersey.

County-level data is derived from the U.S. Census Bureau's American Community Survey, 2008-2012 5-Year Estimates, Tables S1601 and B16001, "Language Spoken at Home" and "Language Spoken at Home by Ability to Speak English" for the population age five years and over. Data presented displays all languages reported, is an

indication of those within the population age five and over, and identifies those who speak a language other than English and those who speak English less than very well. Those populations are displayed as “Limited English Proficiency” populations.

In accordance with the Department of Justice (DOJ), Safe Harbor provision, a minimum of 1,000 persons, or 5% of the geography’s population were used to determine those languages that met the threshold for translation of vital documents.

Port Authority Service Area LEP Table

PA Service Area					
Total Population			16,555,189		
Total LEP Population			3,045,624		
Total LEP Percent			18.4%		
Language	LEP Pop.	% LEP	Language	LEP Pop.	% LEP
Spanish or Spanish Creole	1,623,514	9.66%	Japanese	20,013	0.12%
Chinese	352,332	2.10%	Other Slavic	15,820	0.09%
Russian	137,986	0.82%	Hebrew	14,329	0.09%
Korean	95,173	0.57%	Vietnamese	12,949	0.08%
French Creole	78,954	0.47%	Persian	12,213	0.07%
Other Indic	78,641	0.47%	Serbo-Croatian	11,297	0.07%
Italian	74,051	0.44%	German	8,547	0.05%
Polish	60,769	0.36%	Hungarian	5,546	0.03%
Portuguese or Portuguese Creole	51,190	0.30%	Other Pacific Island	5,184	0.03%
Arabic	46,416	0.28%	Thai	4,823	0.03%
Other Asian	42,695	0.25%	Other and Unspecified	3,990	0.02%
Yiddish	39,565	0.24%	Armenian	3,579	0.02%
Tagalog	38,140	0.23%	Mon-Khmer, Cambodian	1,315	0.01%
French (incl. Patois, Cajun)	34,770	0.21%	Scandinavian	1,274	0.01%
Gujarati	30,170	0.18%	Other West Germanic Languages	1,114	0.01%
African languages	29,988	0.18%			
Other Indo European	29,656	0.18%	Other Native North American	471	0.00%
Urdu	29,582	0.18%	Laotian	251	0.00%
Hindi	25,939	0.15%	Hmong	27	0.00%
Greek	23,592	0.14%	Navajo	10	0.00%
Source: U.S. Census Bureau, American Community Survey 2008-2012 5 Year Estimates, Table B16001.					
Languages under white field met the Limited English Proficiency population threshold.					

Path Service Area LEP Table

PATH Service Area					
Total Population			2,596,368		
Total LEP Population			509,760		
Total LEP Percent			19.6%		
Language	LEP Pop.	% LEP	Language	LEP Pop.	% LEP
Spanish or Spanish Creole	327,053	11.51%	German	1,494	0.05%
Chinese	55,539	1.95%	Other Slavic	1,424	0.05%
Portuguese or Portuguese Creole	19,088	0.67%	Greek	1,326	0.05%
French Creole	11,556	0.41%	Hebrew	1,205	0.04%
French (incl. Patois, Cajun)	10,074	0.35%	Serbo-Croatian	1,136	0.04%
Arabic	8,390	0.30%	Persian	1,025	0.04%
Tagalog	7,608	0.27%			
Korean	6,727	0.24%	Thai	542	0.02%
Japanese	6,568	0.23%	Hungarian	529	0.02%
African languages	6,135	0.22%	Other Pacific Island	487	0.02%
Russian	6,060	0.21%	Other and Unspecified	470	0.02%
Italian	5,952	0.21%	Armenian	428	0.02%
Gujarati	4,805	0.17%	Scandinavian	297	0.01%
Polish	4,769	0.17%	Other West Germanic Languages	265	0.01%
Hindi	4,603	0.16%	Yiddish	190	0.01%
Other Indic	3,812	0.13%	Other Native North American	155	0.01%
Other Asian	3,405	0.12%	Mon-Khmer, Cambodian	68	0.00%
Urdu	2,473	0.09%	Hmong	-	-
Other Indo European	2,107	0.07%	Laotian	-	-
Vietnamese	1,995	0.07%	Navajo	-	-

Source: U.S. Census Bureau, American Community Survey 2008-2012 5 Year Estimates, Table B16001.
Languages under white field met the Limited English Proficiency population threshold.

The data analysis, depicted in the above tables concludes that the Port Authority Service and PATH Service Area's regional average of the LEP population is 18.4% and 19.6% respectively. Of this percentage, Spanish or Spanish Creole is overwhelmingly the most dominant LEP language spoken and utilized within the service areas, accounting for 9.66% and 11.51 % of the population respectively. By contrast, the second most commonly spoken LEP language, Chinese, constitutes just 2.10% and 1.95% of the PA and PATH service area populations respectively.

Though demographic analysis indicates that many other languages that fall within the Safe Harbor provision are spoken within the designated service areas, additional research concludes that these LEP populations are encountered or utilize Port Authority services with far less frequency in comparison to the aforementioned languages. Recognizing the presence of other languages in our service area as well as the fact that data is not static and populations change, we maintain close contact with community leaders and conduct regular demographic assessments to ensure that LEP populations affected by a project are aware of the information available to them, and we always strive to ensure that LEP services are provided when necessary.

Factor 2 Results:

Assess the frequency with which LEP individuals come in contact with the program, activity, or service.

Most often, to aid in the determination of the frequency of LEP contacts with Port Authority facilities, customer service surveys, interviews with field personnel and office staff, and review of past language assistance statistics, in addition to regional and service area demographic information, are utilized.

Additionally, individual departments conducted research and regularly collect data. For example, the Aviation Department determined language assistance needs based on the top 27 most spoken languages internationally. This list remains relatively stable and, typically, languages added are not removed. Terminal by Terminal Customer Satisfaction Surveys, conducted by the Aviation Department, were another useful tool to determine eligible LEPs to

be served. Approximately 10,000 arriving and departing passengers were annually canvassed and most recently the questionnaires were provided in English, Spanish, French, German*, Italian, Japanese, Mandarin, and Korean* languages (*added in 2014). The selected languages were based on the languages spoken by a proportion of annual passengers flying on a carrier and the additional development cost to accommodate the foreign language given the proportion of potential users – noting that only a small proportion of our passengers (5% across the region) may have difficulty with English and use the foreign-language survey. Introductory show cards were also presented to prospective respondents and some foreign-language speaking interviews were conducted to help with language barriers. The Rail Transportation Department (PATH) also utilized surveys to garner LEP information in addition to Census data. An Origin and Destination (O&D) Survey (last conducted in 2012) was used to determine the most frequently used languages for LEP individuals. The eligible service population was based on a combination of Census Tract-level data for customers within a one-mile walking distance from each station and county-level census data for customers who make up more than 10% of a given transit mode to access PATH. The results, which mirror the demographic data for the service area, indicate that the highest percentages of individuals with limited English proficiency speak Spanish, followed by Chinese in a distant second.

Factor 3 Results:

Assess the nature and importance of the program, activity, or service provided by the program.

The nature and importance of Port Authority programs, activities, and services to LEP customers generally mirror the nature and importance of programs, activities, and services to all of our customers. The Port Authority recognizes that public transportation plays a critical role in an individual's ability to access employment, education, and health care. Although the most frequently encountered LEP populations speak Spanish and Chinese, reasonable accommodations are made to provide notice and outreach to other LEP populations who utilize our services.

Factor 4 Results:

Assess the resources available to the recipients and costs.

Port Authority operating departments will continue to use a diverse mix of language assistance and outreach methods to ensure that LEP persons have equal access to programs and services. Expenditures related to providing language assistance have not been tracked separately as they are included in a project's overall outreach budget. Examples of expenditures include translated documents, website pages, brochures and oral interpretation services, customer service agent training program development, new hire training, and refresher courses.

LANGUAGE ASSISTANCE SERVICES

The diverse customers who utilize the public transportation services provided by the Port Authority often require language assistance services. The current best practices for oral and written language assistance services used by the Port Authority, but not used by every operating department, include:

WRITTEN LANGUAGE SERVICES (TRANSLATION)

In the event a respective Port Authority department receives correspondence in a foreign language, the departments will, when applicable, utilize bilingual staff fluent in the language in which the request was received to translate the letter and transcribe a response back to the recipient in the same language. Further, in the absence of a suitable resource available in-house, agency staff, via the Marketing Department, work with a select list of vendors to identify the appropriate translation service as needed. Currently, the Port Authority maintains a list of Minority and Women's Business Enterprise-certified firms who provide translation services. Additionally, we are exploring the establishment of contractual agreements for translation services utilized by other state government agencies.

ORAL LANGUAGE SERVICES (INTERPRETATION)

Oral interpretation services are provided free of charge. For example, the Aviation Department Customer Care Representatives, the first line of assistance for airport patrons, speak over 27 languages and have the ability to utilize LanguageLine translation telephone services, providing assistance in almost all languages 24 hours a day. Interpreter services may also include airline staff, who usually speak the language of the home base of the carrier. For instance, staff from Lufthansa speak German; staff from El Al speak Yiddish. Additionally, our airports have a very diverse employee base who speak many languages, including sign language, Russian, Hindi, Korean, Japanese, Mandarin, French, Spanish, Yoruba, and more. Our employees also speak dialects of these languages, such as Creole, Cantonese, Dogri, and Khoe, depending on their home country.

Similarly, other Port Authority operating departments also offer a LanguageLine translation service at select facilities. PATH maintains a toll-free customer information telephone line that prompts callers to select their preferred language. TB&T specifically offers this service at its interstate bus terminal facilities: the Port Authority Bus Terminal (PABT) and the George Washington Bridge Bus Station (GWBBBS).

Other verbal assistance and interpretation services specifically applicable to the below referenced departments include:

Port Commerce provides assistance at its trucker registration office in Spanish and Polish, the primary languages spoken by the truck driving community.

TB&T utilizes bilingual staff at the PABT and GWBBBS and tollhouses to provide customer assistance and also has Spanish-speaking customer service representatives available on the E-Z Pass New York Customer Service Center telephone information line scheduled during regular operating hours. (Monday through Friday, 7 am to 7 pm and Saturdays, 8 am to 2 pm). Additionally, the Port Authority Bus Terminal offers automated telephone information via a toll-free number with an interactive voice response (IVR) system in English, with Spanish-speaking representatives available during normal operating hours (Monday through Friday, 7 am to 7 pm and Saturdays, 8 am to 2 pm). At all other times, the E-Z Pass New York telephone information line has IVR capability in English and Spanish.

INTERPRETATION SERVICES

The use of interpretation services is project specific, determined by the designated project area and affected community/populations. Translators are available upon request at public meetings, based on the LEP needs of that project and community. GOCOR advises the community of the availability of these services, in advance of scheduled public hearings, via print media and through the Government Relations liaison's regular communication with the respective elected officials and community group leaders of the impacted areas. These community leaders serve as key resources to supplement the statistical information obtained from Census research and the Planning Department in order to identify LEP populations and their needs.

PROVIDING NOTICE TO LEP PERSONS

Notices of nondiscrimination are posted in Spanish and Chinese at locations where people would sensibly seek information, such as information booths and nearby ticket vending machines, or other heavily trafficked areas of facilities.

Signs indicating LanguageLine translation services are posted.

During the planning stages of a project, notification is provided to local residents and businesses of the impacted service area. The methodology of notification varies based upon the size and scope of a project and includes everything from print advertisements in a range of print media outlets in appropriate languages (as determined by the population of the project area) to posters and flyers distributed door to door within the impacted communities. The procedures for requesting a free interpreter are outlined in outreach information. GOCOR also maintains communication with individuals who are active members of their community – not necessarily elected officials – to extend its efforts to identify small or difficult to reach LEP populations. Port Authority staff clarifies that if there are any questions or special accommodations necessary, the Port Authority is willing to address these concerns and provide reasonable accommodations as is feasible.

MONITORING AND UPDATING THE LANGUAGE ASSISTANCE PLAN

GOCOR regularly monitors LEP services provided from reports submitted to OBDCR from operating departments. The Language Assistance Plan will be updated as internal processes develop or change in order to keep pace with best practices.

ATTACHMENT B

AGREEMENT ON TERMS OF DISCUSSION

ATTACHMENT B

REQUEST FOR PROPOSALS FOR INDEFINITE QUANTITY CONTRACTS (IQC) FOR THE PERFORMANCE OF EXPERT CIVIL ENGINEERING (AIRPORT DESIGN) SERVICES ON AN “AS-NEEDED” BASIS FOR FEDERALLY FUNDED PROJECTS DURING 2019-2022 RFP NO. 53251

AGREEMENT ON TERMS OF DISCUSSION

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

Any information (including information contained in any proposal, vendor qualification(s), ideas, models, drawings, or other material communicated or exhibited by us or on our behalf) provided in connection with this procurement is subject to the provisions of the Port Authority Public Records Access Policy adopted by the Port Authority’s Board of Commissioners, which may be found on the Port Authority website at: <http://corpinfo.panynj.gov/documents/Access-to-Port-Authority-Public-Records/>. The foregoing applies to any information, whether or not given at the invitation of the Authority.

(Company)

(Signature)

(Title)

(Date)

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DO NOT RETYPE.

ATTACHMENT C

COMPANY PROFILE

ATTACHMENT C (revised 9/21/18)

COMPANY PROFILE

**REQUEST FOR PROPOSALS FOR INDEFINITE QUANTITY CONTRACTS FOR
PERFORMANCE OF EXPERT PROFESSIONAL CIVIL ENGINEERING SERVICES
(AIRFIELD DESIGN) FOR FEDERALLY FUNDED PROJECTS AS REQUESTED
DURING 2019 THROUGH 2022 - (RFP #53251)**

1. Company Name (print or type):

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

3. Business Telephone Number: _____

4. Business Fax Number: _____

5. Firm website: _____

6. Federal Employer Identification Number (EIN): _____

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

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

9. Officer or Principal of Firm and Title:

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

11. Is your firm certified by the Authority as a Minority-owned, Woman-owned or Small Business Enterprise (MBE/WBE/SBE)?

☐ Yes ☐ No

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

If your firm is an MBE/WBE/SBE not currently certified by the Authority, see the Authority's web site – <http://www.panynj.gov/business-opportunities/supplier-diversity.html>,

to receive information and apply for certification.

12. Is your firm certified by the Authority as a Disadvantaged Business Enterprise (DBE)?

☐ Yes ☐ No

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

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

ATTACHMENT D

**DISADVANTAGED BUSINESS ENTERPRISE
(DBE) PROGRAM**

**REQUEST FOR PROPOSALS FOR INDEFINITE QUANTITY CONTRACTS FOR
PERFORMANCE OF EXPERT PROFESSIONAL CIVIL ENGINEERING SERVICES
(AIRFIELD DESIGN) FOR FEDERALLY FUNDED PROJECTS AS REQUESTED DURING
2019-2022 (RFP #53251)**

ATTACHMENT D

DBE Participation

Your attention is directed to Paragraph 26 of the Agreement in which the Authority has stated the goals for DBE participation in this project. Provide your DBE Participation

Plan by completing Appendix A2 of Attachment D, which shall briefly contain, at minimum, the following:

1. Identification of DBEs: Provide the names and addresses of all DBEs included in the Plan. If none are identified, describe the process for selecting participant firms in order to achieve the good-faith goals under the Agreement.
2. Level of Participation: Indicate the percentage of DBE participation expected to be achieved with the arrangement described in the Plan.
3. Describe the specific scope of work the DBE(s) will perform.
4. Previous DBE Participation: Describe any previous or current DBE participation that the Proposer has utilized in the performance of similar services.
5. Include Appendix A2 of Attachment D in the sealed envelope mentioned in Paragraph B. below.

DISADVANTAGED BUSINESS ENTERPRISE PROGRAM (DBE) (Rev. 08/15/17)

A. POLICY

It is the policy of The Port Authority of New York and New Jersey (the "Port Authority" or the "Authority") and its related entities, including Port Authority Trans-Hudson Corporation ("PATH") that Disadvantaged Business Enterprises ("DBEs") are provided the opportunity to participate in the performance of this Contract. Each proposer shall take all necessary and reasonable steps to ensure that its proposal includes DBE participation and performance of work on this Contract, when awarded. This Contract is subject to the United States Department of Transportation ("USDOT") regulations on "DBEs" contained in Part 26 of Title 49 of the Code of Federal Regulations.

The Proposer shall not discriminate on the basis of race, color, national origin, creed/religion, sex, age or handicap/disability in the performance of this contract. The Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of USDOT-assisted contracts. Failure by the Contractor or subcontractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the PANYNJ deems appropriate.

B. GOAL

The Port Authority Office of Business Diversity and Civil Rights (“OBDCR”) has established a goal for DBE participation on this Contract, which the proposer will be required to show how it will meet, if awarded this Contract. This goal, expressed as a percentage of the total contract price, including change orders issued pursuant to the changes provision of the contract, is:

DBE Participation Goal: 25 %

for firms owned and controlled by socially and economically disadvantaged individuals (as defined in C.5 below) and certified as DBEs by the Authority. Eligible DBE firms are listed on the following Uniform Certification Programs (“UCPs”) websites:

New York UCP – <https://nysucp.newnycontracts.com>

New Jersey UCP – <https://njucp.dbesystem.com>

In the event the successful Proposer’s proposed level of DBE participation is less than this prescribed level of DBE participation, to remain eligible for contract award, the successful proposer must satisfy the good faith efforts requirements set forth in paragraph I.3 below

OBDCR is responsible for determining compliance by the proposer with DBE Program requirements established for this solicitation and in this Contract. The proposer shall make all DBE Program submissions required by this solicitation to the Port Authority Procurement Department contact with a copy to OBDCR. Once awarded, the successful proposer (Contractor) will make all DBE Program submissions to OBDCR at the following address and email address:

Contract Number:

Name: Jacqueline Carroll

Email: jacarroll@panynj.gov Telephone No.: (

Address: The Port Authority of NY & NJ

2 Montgomery Street, 2nd Fl. Jersey City, NJ 07302

C. DEFINITIONS

1. To avoid undue repetition, the following terms, as used in this Agreement, shall be construed as follows: **Bidder or Proposer** can be used interchangeably and **Consultant or Contractor** can be used interchangeably.

2. **Certification** means the process by which a business demonstrates to OBDCR or to a New York State Unified Certification Program Certifying Partner ("NYSUCP") or to a New Jersey Unified Certification Certifying Partner ("NJUCP") that it meets the requirements to be a DBE under USDOT regulations set forth in 49 C.F.R. Part 26.
3. **Disadvantaged Business Enterprise** or DBE is a for-profit small business concern (a) that is at least 51% owned by one or more individuals who are both socially and economically disadvantaged or, in the case of a corporation, in which at least 51% of the stock is owned by one or more such individuals; and (b) whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.
4. **New York State Unified Certification Program Certifying Partners** include the Port Authority of New York & New Jersey, Metropolitan Transportation Authority, the Niagara Frontier Transportation Authority and the New York State Department of Transportation.
5. **New Jersey Unified Certification Program Certifying Partners** include the Port Authority of New York & New Jersey, New Jersey Transit and the New Jersey State Department of Transportation.
6. **Socially and economically disadvantaged individual** means any individual who is a citizen (or lawfully admitted permanent resident) of the United States and who is:
 - a. Any individual OBDCR or a NYSUCP or NJUCP Certifying Partner finds to be a socially and economically disadvantaged individual on a case-by-case basis.
 - b. Any individual in the following groups, members of which are rebuttably presumed to be socially and economically disadvantaged:
 1. **Black Americans** which includes persons having origins in any of the Black racial groups of Africa;
 2. **Hispanic Americans** which includes persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South America or other Spanish or Portuguese culture or origin, regardless of race;
 3. **Native Americans** which includes persons who are American Indians, Eskimos, Aleuts or Native Hawaiians;
 4. **Asian-Pacific Americans** which includes persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands (Republic of Palau), the Commonwealth of the Northern Marianas Islands, Macao, Fiji, Tonga, Kiribati, Juvalu, Nauru, Federated States of Micronesia, or Hong Kong;
 5. **Subcontinent Asian Americans** which includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka;
 6. **Women**; and
 7. Any additional groups whose members are designated as socially and economically

disadvantaged by the Small Business Administration ("SBA"), at such time as the SBA designation becomes effective.

D. THE DBE PROGRAM

The Port Authority has established a Disadvantaged Business Enterprise (DBE) program in accordance with applicable United States Department of Transportation (USDOT) regulations in 49 CFR Part 26. The Port Authority receives Federal financial assistance from the Department of Transportation, and as a condition of receiving this assistance, the Port Authority has signed an assurance that it will comply with these regulations. It is the policy of the Port Authority to ensure that DBEs, as defined in 49 CFR Part 26, have an equal opportunity to receive and participate in USDOT-assisted contracts. It is also Port Authority policy:

To ensure nondiscrimination in the award and administration of USDOT-assisted contracts;

- 1. To create a level playing field on which DBEs can compete fairly for USDOT-assisted contracts;*
- 2. To ensure that the DBE program is narrowly tailored in accordance with 49 CFR Part 26;*
- 3. To ensure that only firms that fully meet regulatory eligibility standards as outlined in 49 CFR Part 26 are permitted to participate as DBEs;*
- 4. To help remove barriers to the participation of DBEs in USDOT-assisted contracts; and,*
- 5. To assist the development of firms that can compete successfully in the market place outside the DBE program.*

The Director of OBDCR has been delegated as the DBE Liaison Officer. In that capacity, the Director of OBDCR is responsible for implementing all aspects of the DBE program. Implementation of the DBE program is accorded the same priority as compliance with all other legal obligations incurred by the Port Authority in its financial assistance agreements with the USDOT.

The Port Authority has disseminated this policy statement to the Board of Commissioners and all the components of our organization. We have disseminated this statement to DBE and non-DBE business communities that perform work for us on USDOT-assisted contracts through posting on the OBDCR website: <http://www.panynj.gov/business-opportunities/supplierdiversity.html>

E. DBE OBLIGATION

The proposer agrees to take all necessary and reasonable steps to ensure that DBEs have the opportunity to compete for and perform work under this Contract, if awarded. (Note: If the total contract price is increased as a result of change orders, the Contractor shall make a good faith effort to achieve a commensurate increase in DBE participation). Submission of the proposal constitutes a certification and representation by the proposer that good faith efforts will be made to satisfy the DBE goal requirement in paragraph B during contract performance.

Furthermore, the Proposer will ensure that the following clause is placed in every contract or subcontract resulting from this Contract:

“The Contractor or subcontractor shall not discriminate on the basis of race, color, national origin, creed/religion, sex, age or handicap/disability, in the performance of this contract. The Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of USDOT-assisted contracts. Failure by the Contractor or subcontractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the PANYNJ deems appropriate.”

F. SUBMISSION OF DBE UTILIZATION PLAN

By submitting a bid or proposal for this Contract, the proposer assures the Authority that it will meet the foregoing goal and shall submit the DBE Goals Statement form (Appendix A1) with its Proposal. If the proposer determines it cannot make this assurance, it may nevertheless submit a bid or proposal, but in such event, it shall note on the DBE Goals Statement form the percentage of DBE participation it anticipates, including documentation supporting the good faith efforts made to achieve the goals set forth in the Contract.

The proposer shall submit, with its Proposal, the DBE Participation Plan and Affirmation Statement (Appendix A2) for each DBE firm it intends to use on this Contract. The DBE Participation Plan and Affirmation Statement shall provide the name and address of each DBE firm, a description of the work to be performed, the dollar value of each DBE subcontract and the signature affirmation from each DBE firm participating in this Contract.

The bidder shall submit with its Proposal the completed Information on Solicited Firms form (Appendix A4), listing every firm that provided a quotation to the bidder for any subcontract to be performed under this Contract, whether the firms are DBE certified and whether the firms' quotes were included in the final Proposal.

1. By listing a firm on its DBE Participation Plan and Affirmation Statement (Appendix A2) the proposer is representing the following:
 - a. It intends to use the firm for the work specified in the DBE Participation Plan and Affirmation Statement (Appendix A2) to perform the work specified.
 - b. The firm is a certified DBE in the states of either New York or New Jersey and is technically and financially qualified to perform the work specified and that the firm is available to perform the work.
 - c. If it is awarded the contract, it will enter into a subcontract with such DBE (or an approved substitute), subject to the terms and conditions of this contract, for the work described and at the price set forth in the DBE Participation Plan and Affirmation Statement (Appendix A2).

It will not substitute a DBE firm listed in its DBE Participation Plan and Affirmation Statement (Appendix A2) unless the Port Authority provides prior written approval in accordance with Paragraph J, below.

G. PROMPT PAYMENT AND RETAINAGE PROVISION

The Contractor agrees to pay each subcontractor under this prime contract for the satisfactory performance of its contract, no later than ten (10) days from the receipt of each payment the Contractor

receives from the Authority. The Contractor agrees further to return all retainage, if any, owed to a subcontractor within ten (10) days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment from the above referenced time-frame may occur only for good cause following written approval from the Port Authority. This clause applies to both DBE and non-DBE subcontractors. Failure to comply with this section may constitute a breach of contract, entitling the Port Authority to remedies provided herein, in addition to any other available remedy.

H. CREDIT TOWARD DBE GOAL

No credit toward meeting the DBE goal will be allowed unless OBDCR or a NYSUCP or NJUCP Certifying Partner has certified the DBE firm as eligible. Only the value of the work actually performed by the DBE will be counted toward the DBE goal. The DBE shall verify payments on the DBE Payment Request Certification Form attached to all invoices. The Authority will use the following guidelines to determine the amount to be counted toward the DBE goal:

1. OBDCR will credit the entire amount of fees or commissions charged by a DBE firm for providing a bona fide service, such as professional, technical, consultant, or managerial services, or for providing bonds or insurance specifically required for the performance of a USDOT-assisted contract, toward DBE goals, provided OBDCR determines the fee to be reasonable and not excessive as compared with fees customarily allowed for similar services.
2. When a DBE subcontracts part of the work of its contract to another firm, the value of the subcontracted work may be counted toward DBE goals only if the DBE's subcontractor is itself a certified DBE. Work that a DBE subcontracts to a non-DBE firm does not count toward DBE goals.
3. Joint ventures between DBEs and non-DBEs may be counted toward the DBE goal in proportion to the total dollar value of the contract equal to the distinct, clearly defined portion of the work of the contract that the DBE performs with its own forces. Please contact the Office of Business Diversity and Civil Rights at (201) 395-3958 for more information about requirements for such joint ventures.
4. OBDCR will credit expenditures to a DBE subcontractor toward DBE goals, only if the DBE is performing a commercially useful function on the contract.
5. Commercially Useful Function
 - A. A DBE is considered to perform a commercially useful function when it is responsible for the execution of a distinct element of work on a contract and carries out its responsibilities by actually performing, managing and supervising the work involved in accordance with normal industry practice. Regardless of whether an arrangement between the Contractor and the DBE represents standard industry practice, if the arrangement erodes the ownership, control or independence of the DBE or in any other way does not meet the commercially useful function requirement, that firm shall not be included in determining whether the DBE goal is met and shall not be included in DBE reports. If this occurs with respect to a firm identified as a DBE, the Contractor shall receive no credit toward the DBE goal and may be required to backfill the participation. A DBE does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction or contract through which funds are passed in order to

obtain the appearance of DBE participation. A DBE may rebut a determination by the Authority that the DBE is not performing a commercially useful function to the United States Department of Transportation (USDOT) funding agency (for example, FAA, FTA or FHWA).

- B. Work Force. The DBE must employ a work force (including administrative and clerical staff) separate and apart from that employed by the Contractor, other subcontractors or their affiliates. This does not preclude the employment by the DBE of an individual that has been previously employed by another firm involved in the Contract, provided that the individual was independently recruited by the DBE in accordance with customary industry practice. The routine transfer of work crews from another employer to the DBE shall not be allowed.
- C. Supervision. All Work performed by the DBE must be controlled and supervised by the DBE without duplication of supervisory personnel from the Contractor, their affiliates and other subcontractors performing Work on the Contract. This does not preclude routine communication between the supervisory personnel of the DBE and other supervisors necessary to coordinate the Work.
- D. Equipment. DBE subcontractors may supplement their equipment by renting or leasing additional equipment in accordance with customary industry practice. If the DBE obtains equipment from the Contractor, other contractors or their affiliates, the DBE shall provide documentation to the Authority demonstrating that similar equipment and terms could not be obtained at a lower cost from other customary sources of equipment. The required documentation shall include copies of the rental or leasing agreements, and the names, addresses, and terms quoted by other sources of equipment.
- E. If a DBE does not perform or exercise responsibility for at least 30 percent of the total cost of its contract with its own work force, or the DBE subcontracts a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work involved, OBDCR will presume that it is not performing a commercially useful function.

6. Counting DBE Participation

When a certified DBE firm is awarded the Contract, the DBE goals shall be deemed to have been met.

The value of the Work performed by a DBE, including that of a DBE prime contractor, with its own equipment, with its own forces, and under its own supervision, will be counted toward the DBE goal, provided the utilization is a commercially useful function. Work performed by DBEs will be counted as set forth below. If the Authority determines that some or all of the DBE's work does not constitute a commercially useful function, only the portion of the work considered to be a commercially useful function will be credited toward the DBE goal.

- A. Subcontractors. 100 percent of the value of the Work to be performed by a DBE subcontractor will be counted toward the DBE goal. The value of such Work includes the cost of materials and supplies purchased by the DBE, except the cost of supplies or equipment leased from the Contractor, other subcontractors or their affiliates will not be counted. When a DBE subcontracts part of the work of its contract to another firm, the value of the subcontracted work may be counted toward DBE goals only if the DBE's subcontractor is itself a DBE. Work that a DBE subcontracts to a non-DBE firm does not

count toward DBE goals.

- B. **Manufacturers/Fabricators.** 100 percent of the expenditure to a DBE manufacturer or fabricator will be counted towards the DBE goal.
- C. **Material Suppliers.** 60 percent of the expenditure to a DBE material supplier will be counted toward the DBE goal. Packagers, brokers, manufacturer's representatives, or other persons who arrange or expedite transactions are not material suppliers within the meaning of this paragraph.
- D. **Brokers/Manufacturer's Representatives.** 100 percent of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees for transportation charges for the delivery of materials or supplies provided by a DBE broker/manufacturer's representative will be counted toward the DBE goal, provided they are determined by the Authority to be reasonable and not excessive as compared with fees customarily allowed for similar services. The cost of the materials and supplies themselves will not be counted.
- E. **Services.** 100 percent of fees or commissions charged by a DBE for providing a bona fide service, such as professional, technical, consultant, or managerial services, or for providing bonds or insurance specifically required for the performance of the Work will be counted toward the DBE goal, provided the fee is reasonable and not excessive as compared with fees customarily allowed for similar services.
- F. **Trucking Operations.** The DBE trucking firm of record is the firm that is listed on the DBE Participation Plan. The DBE trucking firm shall own and operate at least one registered, insured and fully operational truck used for the performance of the Work and shall be responsible for the management and supervision of the entire trucking operation on a particular contract, and there cannot be a contrived arrangement for the purpose of meeting the DBE goal. The DBE trucking firm of record shall control the day-to-day DBE trucking operations for performance of the Work, and shall be responsible for (1) negotiating and executing rental/leasing agreements; (2) hiring and terminating the work force; (3) coordinating the daily trucking needs with the Contractor; and (4) scheduling and dispatching trucks.
 - 1. **DBE Owned/Leased Trucks.** 100% of the value of the trucking operations the DBE provides for the performance of the work using trucks it owns and trucks that are registered, insured and operated by the DBE using drivers it employs, will be counted toward the DBE goal.
 - 2. **DBE Leased Trucks.** The DBE may lease trucks from another DBE, including an owner/operator who is certified as a DBE. 100% of the value of the trucking operations that the lessee DBE provides will be counted toward the DBE goal.
 - 3. **Non-DBE Trucks.** The DBE may lease trucks from non-DBE firms and owner-operators. The value of these trucking services will be counted toward the DBE goal up to the value of services performed by the DBE trucks used on the Contract. DBE participation can be counted for the value of the services of non- DBE trucks that exceed the value of the services performed by DBE trucks only in the amount of the fee or commission a DBE receives as a result of the lease agreement.
- G. **Joint Venture** Joint ventures between DBEs and non-DBEs will be counted toward the DBE goal in proportion to the total dollar value of the Contract equal to the distinct, clearly defined portion of the Work of the Contract that the DBE performs with its own forces. The joint venture agreement is

therefore subject to review by OBDCR, a copy of which is to be furnished by the firm to be awarded the Contract before execution of the Contract.

7. If a firm is not currently certified as a DBE in accordance with 49 CFR Part 26 at the time of the execution of the Contract, OBDCR will not credit the firm's participation toward any DBE goals, except as provided for in 49 CFR Section 26.87(i).
8. When a firm loses its DBE certification, OBDCR will follow the applicable regulations in 49 CFR Section 26.87(j).
 - a. If a contract or subcontract has not been executed with the firm prior to notification of its ineligibility, any participation by the ineligible firm will not be counted toward the contract or overall goal. OBDCR will direct the Contractor to meet the contract goal with an eligible DBE firm or demonstrate good faith efforts to do so.
 - b. If a contract or subcontract has been executed with the firm prior to notification of its ineligibility, the Contractor may continue to receive credit toward its DBE goal for the firm's work.
9. OBDCR will not credit toward the DBE goal the participation of a DBE subcontractor until the amount being counted toward the goal has actually been paid to the DBE, as evidenced by submission of the Statement of Payments to DBE Subcontractors / Lessors / Suppliers and the DBE Payment Request Certification Form.

I. CONTRACT AWARD

1. Only proposers who submit proposals that meet the DBE goal or who demonstrate good faith efforts to meet the DBE goal, as herein provided will be eligible for award of the Contract.
2. If the successful proposer does not reach the DBE goal, the proposer shall nevertheless remain eligible for award of the contract if it can demonstrate to the satisfaction of OBDCR that it has made a good faith effort to meet the DBE goal. In making such a determination, OBDCR shall consider, among other things, the criteria set out in subparagraph 3 below.
3. Demonstration of Good Faith Efforts

To demonstrate a good faith effort to meet the DBE contract goal, a proposer shall submit with the DBE Goals Statement form (Appendix A1) a list of the steps it has taken to obtain DBE participation, together with documentation supporting those steps. Such efforts may be demonstrated by showing the following:

- a. That the proposer attended any pre-solicitation or pre-bid meetings that were scheduled by the Port Authority to inform DBEs of contracting and subcontracting opportunities;
- b. That the proposer advertised in general circulation, trade association, and minority-focus media, at least 15 days before proposal due date, to request DBE subcontract performance on the specific project;
- c. That the proposer provided written notice to a reasonable number of specific DBEs that their interest in the contract was being solicited, in sufficient time to allow the DBEs to participate effectively;

- d. That the proposer followed up initial solicitations of interest by contacting DBEs to determine with certainty whether the DBEs were interested in participating in the project;
 - e. That the proposer selected portions of the work to be performed by DBEs in order to increase the likelihood of meeting the DBE goal (including where appropriate, breaking down contracts into economically feasible units to facilitate DBE participation);
 - f. That the proposer provided interested DBEs with adequate information about the plans, specifications and requirements of the contract;
 - g. That the proposer negotiated in good faith with interested DBEs, not rejecting DBEs as unqualified without sound reasons based on a thorough investigation of their capabilities. Documented efforts of negotiations with DBEs must include at a minimum:
 - 1. The names, addresses and telephone numbers of DBEs that were considered;
 - 2. A description of the information provided to DBEs regarding the plans and specifications for portions of the work to be performed;
 - 3. A statement explaining why agreements with the DBEs could not be reached.
 - h. That the proposer made efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance required by the Port Authority or Consultant;
 - i. That the proposer made efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services; and
 - j. That the proposer effectively used the services of available minority/women community organizations; minority/women contractor's groups; local, state and federal minority/women business assistance offices; and other organizations that provide assistance in the recruitment and placement of DBEs.
4. Reconsideration of Good Faith Efforts Determination

In determining whether a proposer has demonstrated good faith efforts, the Port Authority will look at all efforts that the proposer has made. If OBDCR determines that the successful proposer has failed to make good faith efforts to meet the DBE goal, that firm's submission may be deemed non-responsive. The non-responsive firm will have an opportunity for administrative reconsideration, in accordance with the Port Authority's Protest Procedures. In accordance with the Protest Procedures, as part of this reconsideration,

the proposer will have the opportunity to provide written documentation or argument concerning the issue of whether it met the goal or made adequate good faith efforts to do so. In accordance with the Protest

Procedures, a written decision will be sent to the proposer explaining the basis for finding that the proposer did or did not meet the goal or make adequate good faith efforts to do so.

J. DBE MODIFICATIONS

In the event that a proposer wishes to modify its DBE Participation Plan and Affirmation Statement (Appendix A2) after its submission or after a contract is awarded, the proposer then must request approval for the modification from OBDCR in writing. A proposer may not, without OBDCR's prior consent, terminate a DBE subcontractor approved under this contract and then perform the work of the contract with its own forces or those of an affiliate. A modification includes any change to items of work, material, services, subcontract value or DBE firms, which differ from those identified on the approved DBE Participation Plan and Affirmation Statement (Appendix A2). When a DBE subcontractor is terminated or fails to complete its work for any reason, the Contractor must make good faith efforts to find another DBE subcontractor to substitute for the original DBE. These good faith efforts must be directed at finding other DBEs to perform at least the same amount of work under the contract as the former DBE to the extent needed to meet the contract goal. The Contractor must provide OBDCR with any and all documents and information as may be requested with respect to the modification. If OBDCR determines that the Contractor failed to make good faith efforts, the Port Authority may consider such failure a breach of contract, entitling the Port Authority to remedies provided herein, in addition to any and all other available remedies. Subsequent to Contract award, all changes to the DBE Participation Plan must be submitted via a Modified DBE Participation Plan and Affirmation Statement (Appendix A3) to the Manager for review and approval by the Authority's Office of Business Diversity and Civil Rights. For submittal of modifications to the DBE Plan, Contractors are directed to use Appendix A3, which may be downloaded at <http://www.panynj.gov/business-opportunities/pdf/PA4243.pdf>.

K. EEO/NON-DISCRIMINATION

During the performance of this Contract, the Contractor hereby agrees that no person on the ground of race, color, national origin, creed/religion, sex, age or handicap/disability shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the furnishing of goods or services or in the selection and retention of subcontractors and/or vendors under this Contract. Contractor shall also ascertain and comply with all applicable federal, state and local laws, ordinances, rules, regulations, and orders that pertain to equal employment opportunity, affirmative action, and non-discrimination in employment, including 49 CFR Part 26.

L. OFFICE OF THE INSPECTOR GENERAL

The Port Authority Office of Inspector General (OIG) is responsible for investigating fraud and misconduct by Port Authority contractors, subcontractors, consultants, suppliers and others, including the DBE Program.

Depending upon the dollar value of the construction project, and regulatory requirements, the OIG might engage the services of an Integrity Monitor who reports to the OIG and assists in monitoring compliance governing the DBE program.

The OIG and its Integrity Monitors may perform on-site investigations and payment verifications, review relevant consultant, contractor, subcontractor and supplier documents, including but not limited to financial records, certificates and licenses,

certified payroll reports, and employee sign-in sheets. They may also interview officers and employees of these firms either on-site, at their offices, or at any other location the OIG determines is in the best interest of the Port Authority.

All consultants, contractors, subcontractors, suppliers and others who are participating in the DBE Program in any manner, shall cooperate fully with the Port Authority OIG and shall provide all requested documents immediately upon request. The failure to cooperate may be considered a breach of contract, entitling the Port Authority to remedies provided herein, in addition to any other available remedy.

M. PROTECTING AGAINST TERMINATION FOR CONVENIENCE

Contractor must give a DBE subcontractor five (5) days to respond to the Contractor's notice of termination and advise the Authority/PATH and the Contractor of the reasons, if any, why it objects to the proposed termination of its subcontract and why the Authority/PATH should not approve the Contractor's action. If required in a particular case as a matter of public necessity (e.g. safety), the Authority/PATH may provide a response period shorter than five (5) days.

N. CONTRACT ASSURANCE

The Contractor, subrecipient or any of its subcontractors shall not discriminate on the basis of race, color, national origin, creed/religion, sex, age or handicap/disability in the performance of this contract. The Contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT-assisted contracts. Failure by the Contractor to carry out these requirements is a material breach of this Contract, which may result in the termination of this Contract or such other remedy as the Authority/PATH deems appropriate, which may include, but is not limited to:

1. Withholding monthly progress payments;
2. Assessing sanctions;
3. Liquidated damages; and/or
4. Disqualifying the Contractor from future bidding as non-responsible.

The Contractor shall include the foregoing language of this section in its subcontracts under this Contract, and further agrees to provide the Authority/PATH with copies of its subcontracts with its request for subcontractor approval, as well as upon request of the Authority/PATH.

O. APPENDICES

1. APPENDIX A1: Professional, Technical And Advisory Services DBE Goals Statement
2. APPENDIX A2: Professional, Technical And Advisory Services DBE Participation Plan and Affirmation Statement
3. APPENDIX A3: Modified Professional, Technical And Advisory Services DBE Participation Plan and Affirmation Statement
4. APPENDIX A4: Professional, Technical And Advisory Services Information On Solicited Firm

THE PORT AUTHORITY OF NY & NJ
OFFICE OF BUSINESS DIVERSITY AND CIVIL RIGHTS

APPENDIX A1: PROFESSIONAL, TECHNICAL AND ADVISORY SERVICES PA 3749E / 3-16
DBE GOALS STATEMENT

The undersigned Proposer has satisfied the requirements of the Agreement in the following manner (Complete the appropriate spaces and check one box):

☐ The Proposer is committed to meeting the DBE goal set forth in this Agreement.

OR

☐ The Proposer is unable to meet the DBE goal set forth in this Agreement, but is committed to a minimum of _____% DBE contract on this Agreement and submits the attached narrative and documentation demonstrating good faith efforts consistent with Appendix A of 49 CFR 26 to meet the DBE utilization goal set forth in this Agreement. Attach as many pages as necessary to provide a full and complete narrative and supporting documentation of good faith efforts made. This narrative shall be submitted on company letterhead and signed.

It is the present intent of the Proposer to utilize the specific DBE firms identified in Appendix A2 in the performance of the Services under this Agreement. If for any reason, one or more of the DBE firms identified in Appendix A2 are unable or unwilling to participate, Proposer will make good faith efforts to replace the DBE firm with another DBE firm in accordance with the Standard Agreement clause entitled "Disadvantaged Business Enterprise Program".

I _____ (print name), an officer of _____
(company name), certify that I have read the Appendix A1 - Professional Services - DBE Goals Statement and the information contained in it is true. I fully understand that any false statement within this submittal may prevent the company and/or the undersigned from being found to be responsible bidders/proposers in connection with future agreements. In addition, any false statement within this submittal may subject the company and/or the undersigned to criminal charges in the state and federal courts of New York and New Jersey.

Signature _____ Title _____ Date _____

Officer must have ACKNOWLEDGEMENT BY NOTARY PUBLIC completed on the reverse side.

ACKNOWLEDGMENT BY NOTARY PUBLIC

APPENDIX A1 – PROFESSIONAL SERVICES – DBE GOALS STATEMENT (reverse)

STATE OF _____)
)ss:
COUNTY OF _____)

On the ____ day of _____ in the year 20____, before me, the above undersigned, personally appeared _____, the _____, of _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity.

Name of Notary (print) _____

(Affix Notary Stamp Here)

My Commission Expires _____

(Notary Signature)

(Date)

OFFICE OF BUSINESS DIVERSITY AND CIVIL RIGHTS

**APPENDIX A3: MODIFIED PROFESSIONAL, TECHNICAL & ADVISORY SERVICES
DBE PARTICIPATION PLAN AND AFFIRMATION STATEMENT**

PA 4243/ 06-16

Instructions: Submit one MODIFIED DBE PARTICIPATION PLAN AND AFFIRMATION STATEMENT form for each DBE firm used on this Agreement. To avoid undue repetition, the following terms, as used in this Agreement, shall be construed as follows: Bidder/Proposer/Respondent - can be used interchangeably and signify any Contractor, Consultant, Supplier, or Vendor who submits a response to this solicitation.

RFP NUMBER AND TITLE: _____

PROPOSER:

Name of Firm: _____

Address: _____ Telephone: _____

Email Address: _____

DBE:

Name of Firm: _____

Address: _____ Telephone: _____

Description of work to be performed by DBE: _____

Calculation (supply only): _____

The Proposer is committed to utilizing the above-named DBE for the services described above. The estimated dollar value of these services is \$ _____ or _____% of the total Agreement amount of \$ _____. The anticipated start date is _____ and the anticipated completion date is _____.

AFFIRMATION of DBE

The above-named DBE affirms that it will perform the portion of the Agreement for the estimated dollar value as stated above.

By: _____
Signature of Principal or Officer of DBE – Print Name and Title _____ Date _____

If the Proposer does not receive award of the Agreement, any and all representations in this Modified DBE Participation Plan and Affirmation Statement shall be null and void.

I _____ (print name), an officer of _____ (company name), certify that I have read the Appendix A3 Modified Professional, Technical & Advisory Services DBE Participation Plan and Affirmation Statement and the information contained in it is true. I fully understand that any false statement within this submittal may prevent the company and/or the undersigned from being found to be responsible Bidders/Proposers in connection with future agreements. In addition, any false statement within this submittal may subject the company and/or the undersigned to criminal charges in the state and federal courts of New York and New Jersey.

Signature _____ Title _____ Date _____

Please Note: Only 60% of the expenditure to a DBE material supplier will be counted toward the DBE goal. Please show calculation above. Example: \$100,000 x 60% = \$60,000 estimated DBE dollar value of work. Plan cannot be accepted without calculation.

Officer of Proposer must have ACKNOWLEDGEMENT BY NOTARY PUBLIC completed on the reverse side.

ACKNOWLEDGMENT BY NOTARY PUBLIC

PA4243

**APPENDIX A3 - MODIFIED PROFESSIONAL, TECHNICAL AND ADVISORY SERVICES
DBE PARTICIPATION PLAN AND AFFIRMATION STATEMENT (reverse)**

STATE OF _____) SS:
COUNTY OF _____

On the _____ day of _____ in the year 20_____, before me, the above undersigned, personally appeared _____, the _____ of _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity.

Name of Notary (print) _____

(Affix Notary Stamp Here)

My Commission Expires _____
Notary Signature _____ (Date) _____

APPENDIX A4: PROFESSIONAL , TECHNICAL AND ADVISORY SERVICES INFORMATION ON SOLICITED FIRMS PA 3749G / 06-16

The Proposer must complete this form for itself and for all firms, which gave the Proposer a quotation for any services planned to be subcontracted regardless of whether they are ultimately chosen to participate in the Agreement. Provide the information required below for every firm that provided a proposal or a quote for a subcontract – even if the proposal or quote from the firm is not used in the preparation of the final Proposal.

Name of Firm	Address of Firm	Phone Number	Contact Person	Firm Age	Annual Gross Revenue Range NOTE: See Footnote Below	DBE Certified (Yes/No)

Footnote: Annual Gross Revenue Ranges: Less than \$500,000; \$500,000 - \$1 Million; \$1 - \$2 Million; \$2 - \$5 Million; Over \$5 Million - Select the category that best identifies the annual gross revenue of the solicited firm.

I _____ (print name), an officer of _____ (company name), certify that I have read the Appendix A4 – **PROFESSIONAL, TECHNICAL AND ADVISORY SERVICES- INFORMATION ON SOLICITED FIRMS** and the information contained in it is true. I fully understand that any false statement within this submittal may prevent the company and/or the undersigned from being found to be responsible Bidders/Proposers in connection with future agreements. In addition, any false statement within this submittal may subject the company and/or the undersigned to criminal charges in the state and federal courts of New York and New Jersey.

Signature _____ Title _____ Date _____

Officer must have ACKNOWLEDGEMENT BY NOTARY PUBLIC completed on reverse side.

ACKNOWLEDGMENT BY NOTARY PUBLIC

**APPENDIX A4 – PROFESSIONAL, TECHNICAL AND ADVISORY SERVICES – INFORMATION ON SOLICITED FIRMS
(reverse)**

STATE OF _____)

S.S.:

COUNTY OF _____)

On the ____day of _____ in the year 20____, before me, the above undersigned, personally appeared_____, the _____, of _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity.

Name of Notary (print) _____

(Affix Notary Stamp Here)

My Commission Expires _____

(Notary Signature)

(Date)

ATTACHMENT E

SAMPLE STAFFING PLAN

**REQUEST FOR PROPOSALS FOR INDEFINITE QUANTITY CONTRACTS
FOR PERFORMANCE OF EXPERT PROFESSIONAL CIVIL ENGINEERING
SERVICES (AIRFIELD DESIGN) FOR FEDERALLY FUNDED PROJECTS
AS REQUESTED DURING 2019-2022 (RFP #53251)**

ATTACHMENT E - STAFFING PLAN

[illegible]

ATTACHEMENT F

INSURANCE REQUIREMENTS

**REQUEST FOR PROPOSALS FOR INDEFINITE QUANTITY CONTRACTS FOR
PERFORMANCE OF EXPERT PROFESSIONAL CIVIL ENGINEERING SERVICES
(AIRFIELD DESIGN) FOR FEDERALLY FUNDED PROJECTS AS REQUESTED
DURING 2019 -2022 (RFP #53251)**

ATTACHMENT F

INSURANCE REQUIREMENTS

LIABILITY INSURANCE AND WORKERS' COMPENSATION INSURANCE

A. Commercial Liability Insurance:

1) The Consultant(s), and all of its/their Sub-consultants shall take out, maintain, and pay the premiums on **Commercial General Liability Insurance** for the life of the Agreement and such Insurance and shall be written on an ISO occurrence form CG 00 01 0413 or its equivalent covering the obligations assumed by the Consultant(s) under this Agreement, including, but not limited to, Premises-Operations, Products and Completed Operations, and Independent Contractor's coverages, with contractual liability language covering the obligations assumed by the Consultant(s) with insurance covering against claims for injuries to persons or damages to property which may arise from or in connection with products and materials supplied to the Agency in limits of not less than \$ **5,000,000** combined single limit per occurrence and in the annual aggregate. If vehicles are to be used to carry out the performance of this Agreement, then the Consultant(s) shall also take out, maintain and pay the premiums on **Automobile Liability Insurance** covering all owned, non-owned and hired autos in not less than \$ **5,000,000** combined single limit per accident for bodily injury and property damage.

The insurance shall be written on an occurrence basis, as distinguished from a "claims made" basis, and shall not include any exclusions for "action over claims" (insured vs. insured) and minimally arranged to provide and encompass at least the following coverages:

- Contractual Liability to cover liability assumed under the Agreement;
- Independent Contractor's Coverage;
- Premises-Operations, Products and Completed Operations Liability Insurance;
- The insurance coverage (including primary, excess and/or umbrella) hereinafter afforded by the Consultant(s) and Sub-consultant(s) shall be primary insurance and non-contributory with respect to the additional insureds;
- Excess/umbrella policies shall "follow form" to the underlying policies;
- Excess/umbrella policies shall have a liberalization clause with drop down provision;
- To the extent any coverage the Consultant(s) and Sub-consultant(s) obtains and/or maintains under this Agreement contains "Other Insurance" language or provisions shall not be applicable to the additional insureds or to any insurance coverage maintained by the additional insureds;
- All insurance policies shall include a waiver of subrogation, as allowed by law, in favor of the additional insureds;

- Defense costs must be outside of policy limits. Eroding limits policies are not permitted;
- In the event the Consultant(s) and/or its Sub-consultant(s) obtains and/or maintains broader coverage and/or insurance in an amount greater than the minimum limits required under this Agreement, then the full limits of that insurance coverage will be available to respond to any claims asserted against the additional insureds that arises out of or is in any way connected with this Agreement;
- Additional insureds coverage shall not be restricted to vicarious liability unless required by controlling law;

In addition, the liability policy(ies) shall be written on a form at least as broad as ISO Form CG 20 10 10 01 (for ongoing operations work) together with ISO Form CG 20 37 10 01 (for completed operations work) or their equivalent and endorses to name “The Port Authority of New York and New Jersey, and its related entities, their Commissioners, Directors, Superintendents, officers, partners, employees, agents, their affiliates, successors or assigns”, in addition to: The City of New York, for all operations at John F. Kennedy and LaGuardia Airports; Port Authority Trans-Hudson Corporation, for operations at PATH; AFCO AvPorts Management LLC, for operations at Teterboro Airport; AFCO AvPorts Management LLC and NY State Dept. of Transportation , for operations at Stewart Int’l Airport, Trends Urban Renewal for operations at PATC and Silverstein Properties Inc.; The Port Authority of New York and New Jersey; Silverstein 2/3/4 WTC Redevelopment LLC; WTC Redevelopment LLC; World Trade Center Properties LLC; 4 World Trade Center LLC; Net Lessees 'Association of the World Trade Center; WTC Management and Development LLC; Silverstein WTC Mgmt. Co. LLC. Silverstein WTC Mgmt. Co II LLC; Silverstein WTC Properties LLC; Silverstein WTC Management and Development LLC; Silverstein WTC LLC.; WTC Investors LLC.; 4 WTC Holdings LLC; WTC Investors Management and Development LLC; World Trade Center Holdco LLC; 4 WTC Mezz LLC.

for operations at the World Trade Center Site as “Insured” (as defined in the policy or in an additional insured endorsement amending the policy’s “Who Is An Insured” language as the particular policy may provide) on its liabilities policies with respect to liability arising out of work or operations performed by or on behalf of the Consultant(s) including, but not limited to, materials, parts or equipment furnished in connection with such work or operations. The “Insured” shall be afforded coverage and defense as broad as if they are the first named insured and regardless of whether they are otherwise identified as additional insureds under the liability policies, including but not limited to premises-operations, products-completed operations of the Commercial General Liability Policy. Such additional insureds status shall be provided regardless of privity of contract between parties. The liability policy(ies) and certificate of insurance shall contain cross-liability language providing severability of interests so that coverage will respond as if separate policies were in force for each insured. An act or omission of one of the insureds shall not reduce or void coverage to the other insureds. The Consultant(s) is/are responsible for all deductibles or losses not covered by commercially procured insurance. Any portion of the coverage to be provided under a Self-Insured Retention (SIR) of the Consultant(s) is/are subject to the review and approval of the General Manager, Risk Financing. Furthermore, any insurance or self-insurance maintained by the above additional insureds shall not contribute to any loss or claim.

Any self-insured retention shall cover any liability imposed upon the Consultant(s) and any and all subsidiaries with respect to all operations and obligations assumed by the Consultant(s) and any and all subsidiaries. The undersigned represents that such program provides the Additional Insureds (as defined in the Agreement) with all rights, immunities and protections that would be provided by traditional independent insurance required under the Agreement, including, but not limited to, the defense obligations that insurers are required to undertake in liability policies pursuant to the terms of the Agreement.

If any of the Work is to be done on or at Port Authority facilities by the Sub-consultants and, if the Consultant(s) requires its Sub-consultant(s) to procure and maintain such insurance in the name of the Consultant(s), then such insurance as is required herein shall include and cover the additional insureds and it must have insurance limits not lower than those set forth by the Port Authority herein, along with all the insurance requirements in this "Insurance" section.

Further, it is the Consultant's responsibility to maintain, enforce and ensure that the type of coverages and all limits maintained by it and any of all Sub-consultants are accurate, adequate and in compliance with the Port Authority requirement. All certificates of insurance shall be turned over to the Port Authority prior to the start of work, and upon completion of the Agreement.

"The Consultant, its Sub-consultant(s) and its insurer(s) shall not, without obtaining the express advance written permission from the General Counsel of the Port Authority, raise any defense involving in any way the jurisdiction of the Tribunal over the person of the Port Authority, the immunity of the Port Authority, its Commissioners, officers, agents or employees, the governmental nature of the Port Authority, or the provisions of any statutes respecting suits against the Port Authority."

2) Workers' Compensation Insurance:

The Consultant(s) and its/their Sub-consultant(s) shall take out, maintain and pay premiums on Workers' Compensation Insurance in accordance with the requirements of law in the state(s) where work will take place, and Employer's Liability Insurance with limits of not less than **\$1,000,000** each accident. Such policy shall include a waiver of subrogation endorsement in the benefit of the additional insureds.

3) Additional Coverages: The Consultant(s) shall have the policy endorsed when required by the Chief Engineer for specific services hereunder and include the additional premium cost thereof as an out-of-pocket expense:

- a) Any/all activities performed airside must, at all times, be performed while under security escort as approved in advance, and in writing by the Project Manager. If the services of the Consultant(s), as directed by the Authority, require the performance of services airside, the Commercial General Liability and Automobile Liability coverage limits stipulated in subparagraph 1, above, shall be increased to an amount not less than \$25,000,000 per occurrence as provided herein.

- b) Endorsement to eliminate any exclusions applying to the explosion, collapse, and underground property damage (XCU) hazards.
 - c) Endorsement to eliminate any exclusions on account of ownership, maintenance, operation, use, loading or unloading of watercraft.
 - d) Coverage for work within fifty (50) feet of railroad.
- 4) **Additional Coverages:** The Consultant(s) shall have the policy endorsed when required by the Chief Engineer for specific services hereunder and include the additional premium cost thereof as an out-of-pocket expense:
- a) United States Longshoremen's and Harbor Workers' Compensation Act Endorsement.
 - b) Coverage B Endorsement - Maritime (Masters or Members of the Crew of Vessels), in limits of not less than \$1,000,000 per occurrence.
 - c) Amendments to Coverage B, Federal Employers' Liability Act in limits of not less than \$1,000,000 per occurrence.

5) **Professional Liability Insurance:**

The Consultant(s) shall take out, maintain and pay premiums on Professional Liability Insurance in limits of not less than **\$ 5,000,000** each occurrence, covering acts, errors, mistakes, and omissions arising out of the work or services performed by Consultant(s), or any person employed by Consultant(s). All endorsements and exclusions shall be evidenced on the certificate of insurance. The coverage shall be written on an occurrence basis or may be written on a claims made basis with a minimum of a three-year reporting/discovery period.

Each policy above shall contain an endorsement that the policy may not be canceled, terminated or modified without thirty (30) days' prior written notice to the Project Manager, at the location where the work will take place with a copy to the General Manager, Risk Financing.

The Port Authority may, at any time during the term of this Agreement, change or modify the limits and coverages of insurance. Should the modification or change result in an additional premium, the General Manager, Risk Financing for the Port Authority may consider such cost as an out-of-pocket expense.

Within five (5) days after award of this Agreement and prior to the start of work at the site, the Consultant(s) must submit an original certificate of insurance, to the Project Manager and Exigis email: certificates-portauthority@riskworks.com at the location where the work will take place. This certificate of insurance MUST show evidence of the above insurance policy(ies), including, but not limited to, the title of this Agreement, the P. A. Agreement number, the notice of cancellation provisions, prior to the start of work. The Consultant(s) is/are also responsible for maintaining and conforming to all insurance requirements from the additional insureds and their successors and assigns. The General Manager, Risk Financing must approve the certificate(s) of

insurance before any work can begin. Upon request of the General Manager, Risk Financing/Treasury, the Consultant shall furnish to the Authority a certified copy of each policy itself, including the provisions establishing premiums.

Renewal certificates of insurance or policies shall be delivered to the Authority's Project Manager, and upon request from the additional insureds, their successors or assigns at least fifteen (15) days prior to the expiration date of each expiring policy. The General Manager, Risk Financing must approve the renewal certificate(s) of insurance before work can resume on the facility. If at any time any of the certificates or policies shall become unsatisfactory to the Authority, the Consultant(s) shall promptly obtain a new and satisfactory certificate and policy and provide same to the Port Authority.

If at any time the above liability insurance should be canceled, terminated, or modified so that the insurance is not in effect as above required, then, the Consultant(s) and all Sub-consultants shall suspend performance of the Agreement at the premises until a satisfactory insurance policy(ies) and certificate of insurance is provided to and approved by Risk Financing, unless the Facility or Project Manager directs the Consultant(s), in writing, to continue to performing work under the Agreement. If the Agreement is so suspended, no extension of time shall be due on account thereof.

Failure by the Consultant(s) to meet any of the insurance requirements, including the requirement that the Port Authority be afforded the full extent of the insurance obtained under this Agreement without limitation, shall be deemed a material breach of Agreement and may be a basis for termination of this Agreement by the Port Authority.

The requirements for insurance procured by the Consultant(s) shall not in any way be construed as a limitation on the nature or extent of the contractual obligations assumed by the Consultant(s) under this Agreement. The insurance requirements are not a representation by the Authority as to the adequacy of the insurance to protect the Consultant against the obligations imposed on them by law or by this or any other Agreement.

All insurance coverage shall be provided by the Consultant(s) and/or by or for any of its/their Sub-consultant(s) at no additional expense to the Port Authority and its related entities. A copy of this "Insurance" section shall be given to your insurance agent and Sub-consultant(s) and shall form a part of the covered Agreement for insurance purposes in furtherance of the insurance requirements of this Agreement.

ATTACHMENT G

PROPOSER REQUIREMENTS

Attachment G

Proposer Requirement A

A. Minimum of ten (10) permanent full-time Civil “Paving & Utilities” Engineers

* Note - Duplicate form as necessary *

Reference RFP Section I – Proposer Requirements

If the Proposer is a common law joint venture, specify which entity’s experience is being cited below to satisfy the Requirement.

Name	
Brief description of Scope of work	

Name	
Brief description of Scope of work	

Name	
Brief description of Scope of work	

Name	
Brief description of Scope of work	

Name	
Brief description of Scope of work	

Name	
Brief description of Scope of work	

Note – Client Contact must be employee of Company

Name	
Brief description of Scope of work	

Name	
Brief description of Scope of work	

Name	
Brief description of Scope of work	

Name	
Brief description of Scope of work	

Note – Client Contact must be employee of Company

Attachment G

Proposer Requirement B

B. Firms must have completed ten (10) Aeronautical Aprons, Runways and Taxiway projects as a Prime.

* Note - Duplicate form as necessary *

Reference RFP Section I – Proposer Requirements

If Proposer is a common law joint venture, specify which entity's experience is being cited below to satisfy the Requirement.

Client Name/ Contracting Entity	
Contract Start Date	
Contract End Date	
Brief description of Scope of work	
Client Contact Name / Title	
Client Contact Email Address	
Client Contact Phone Number	

Client Name/ Contracting Entity	
Contract Start Date	
Contract End Date	
Brief description of Scope of work	
Client Contact Name / Title	
Client Contact Email Address	
Client Contact Phone Number	

Client Name/ Contracting Entity	
Contract Start Date	
Contract End Date	
Brief description of Scope of work	
Client Contact Name / Title	
Client Contact Email Address	
Client Contact Phone Number	

Note – Client Contact must be employee of Company

Client Name/ Contracting Entity	
Contract Start Date	
Contract End Date	
Brief description of Scope of work	
Client Contact Name / Title	
Client Contact Email Address	
Client Contact Phone Number	

Client Name/ Contracting Entity	
Contract Start Date	
Contract End Date	
Brief description of Scope of work	
Client Contact Name / Title	
Client Contact Email Address	
Client Contact Phone Number	

Client Name/ Contracting Entity	
Contract Start Date	
Contract End Date	
Brief description of Scope of work	
Client Contact Name / Title	
Client Contact Email Address	
Client Contact Phone Number	

Note – Client Contact must be employee of Company

Attachment G

Proposer Requirement C

C. Partner/Principal(s) of Firm must be a licensed P.E. in the State of New York and New Jersey.

* Note - Duplicate form as necessary *

Reference RFP Section I – Proposer Requirements

If Proposer is a common law joint venture, specify which entity's experience is being cited below to satisfy the Requirement.

Partner/Principal of Firm	
P.E. License New Jersey #	
P.E. License New York #	

Partner/Principal of Firm	
P.E. License New Jersey #	
P.E. License New York #	

Partner/Principal of Firm	
P.E. License New Jersey #	
P.E. License New York #	

Note – Client Contact must be employee of Company

EXHIBIT I

**FEDERAL AVIATION ADMINISTRATION (FAA)
CONTRACT PROVISIONS**

FEDERAL AVIATION ADMINISTRATION REQUIRED CONTRACT PROVISIONS

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I. DEFINITIONS

For the purposes of this document:

- A. The term “contractor” means a contractor, subcontractor, or consultant; and means one who participates through a contract or subcontract (at any tier).
- B. The terms “sponsor” or “Owner” mean The Port Authority of New York and New Jersey (the “Port Authority.”)
- C. The term “bid” is understood to mean a bid, an offer, or a proposal.
- D. The term “applicant” has two meanings:
 - a. For the Equal Employment Opportunity (EEO) clause, the term applicant means an applicant for employment (whether or not the phrase, for employment, follows the word applicant or applicants).
 - b. For all other clauses, the term applicant means a bidder, offeror, or proposer for a contract.

II. CONTRACT PROVISIONS FOR FEDERAL AVIATION ADMINISTRATION CONTRACTS

A. ACCESS TO RECORDS AND REPORTS (REFERENCE: 2 CFR § 200.333, 2 CFR § 200.336, FAA ORDER 5100.38) (MUST BE INCLUDED IN ALL CONTRACTS AND SUBCONTRACTS)

The Contractor must maintain an acceptable cost accounting system. The Contractor agrees to provide the Sponsor, the Federal Aviation Administration, and the Comptroller General of the United States or any of their duly authorized representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to the specific contract for the purpose of making audit, examination, excerpts and transcriptions. The Contractor agrees to maintain all books, records and reports required under this contract for a period of not less than three years after final payment is made and all pending matters are closed.

B. NOTICE OF REQUIREMENT FOR AFFIRMATIVE ACTION (REFERENCE: 41 CFR PART 60-4, EXECUTIVE ORDER 11246) (APPLIES TO CONSTRUCTION CONTRACTS AND SUBCONTRACTS THAT EXCEED \$10,000)

1. The Offeror's or Bidder's attention is called to the "Equal Opportunity Clause" and the "Standard Federal Equal Employment Opportunity Construction Contract Specifications" set forth herein.

2. The goals and timetables for minority and female participation, expressed in percentage terms for the contractor's aggregate workforce in each trade on all construction work in the covered area, are as follows:

Timetables

Goals for minority participation for each trade [sponsor must insert established goal]

Goals for female participation in each trade (6.9%)

These goals are applicable to all of the Contractor's construction work (whether or not it is Federal or federally-assisted) performed in the covered area. If the Contractor performs construction work in a geographical area located outside of the covered area, it shall apply the goals established for such geographical area where the work is actually performed. With regard to this second area, the Contractor also is subject to the goals for both its federally involved and non-federally involved construction.

The Contractor's compliance with the Executive Order and the regulations in 41 CFR Part 60-4 shall be based on its implementation of the Equal Opportunity Clause, specific affirmative action obligations required by the specifications set forth in 41 CFR 60-4.3(a), and its efforts to meet the goals. The hours of minority and female employment and training must be substantially uniform throughout the length of the contract, and in each trade, and the Contractor shall make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority or female employees or trainees from Contractor to Contractor or from project to project, for the sole purpose of meeting the Contractor's goals, shall be a violation of the contract, the Executive Order, and the regulations in 41 CFR Part 60-4. Compliance with the goals will be measured against the total work hours performed.

3. The Contractor shall provide written notification to the Director of the Office of Federal Contract Compliance Programs (OFCCP), within 10 working days of award of any construction subcontract in excess of \$10,000 at any tier for construction work under the contract resulting from this solicitation. The notification shall list the name, address, and telephone number of the subcontractor; employer identification number of the subcontractor; estimated dollar amount of the subcontract; estimated starting and completion dates of subcontract; and the geographical area in which the subcontract is to be performed.

4. As used in this notice and in the contract resulting from this solicitation, the "covered area" is [sponsor must insert state, county, and city].

C. BREACH OF CONTRACT TERMS (REFERENCE: 2 CFR § 200 APPENDIX II(A)) (APPLIES TO ALL CONTRACTS THAT EXCEED THE SIMPLIFIED ACQUISITION THRESHOLD AS STATED IN 2 CFR § 200 APPENDIX II(A), CURRENTLY SET AT \$150,000)

Any violation or breach of terms of this contract on the part of the Contractor or its subcontractors may result in the suspension or termination of this contract or such other action that may be necessary to enforce the rights of the parties of this agreement.

Owner will provide Contractor written notice that describes the nature of the breach and corrective actions the Contractor must undertake in order to avoid termination of the contract. Owner reserves the right to withhold payments to Contractor until such time the Contractor corrects the breach or the Owner elects to terminate the contract. The Owner's notice will identify a specific date by which the Contractor must correct the breach. Owner may proceed with a termination of the contract if the Contractor fails to correct the breach by the deadline indicated in the Owner's notice.

The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder are in addition to, and not a limitation of, any duties, obligations, rights and remedies otherwise imposed or available by law.

D. BUY AMERICAN CERTIFICATION (REFERENCE: 49 USC § 50101)

The Contractor agrees to comply with 49 USC § 50101, which provides that Federal funds may not be obligated unless all steel and manufactured goods used in AIP-funded projects are produced in the United States, unless the FAA has issued a waiver for the product; the product is listed as an Excepted Article, Material Or Supply in Federal Acquisition Regulation subpart 25.108; or is included in the FAA Nationwide Buy American Waivers Issued list.

When bidding on a task order for an AIP funded project that specifies that a Buy American certification is required, a bidder or offeror must submit the appropriate Buy American certification included herein with all bids or offers. Bids or offers that are not accompanied by a completed Buy American certification must be rejected as nonresponsive.

Type of Certification is based on Type of Project:

There are two types of Buy American certifications.

- For projects for a facility, the Certificate of Compliance Based on Total Facility (Terminal or Building Project) must be submitted.
- For all other projects, the Certificate of Compliance Based on Equipment and Materials Used on the Project (Non-building construction projects such as runway or roadway construction; or equipment acquisition projects) must be submitted.

Certificate of Buy American Compliance for Total Facility
(Buildings such as Terminal, SRE, ARFF, etc.)

As a matter of bid responsiveness, the bidder or offeror must complete, sign, date, and submit this certification statement with their proposal. The bidder or offeror must indicate how they intend to comply with 49 USC § 50101 by selecting one of the following certification statements. These statements are mutually exclusive. Bidder must select one or the other (i.e. not both) by inserting a checkmark (✓) or the letter “X”.

- ☐ Bidder or offeror hereby certifies that it will comply with 49 USC. 50101 by:
- a) Only installing steel and manufactured products produced in the United States; or
 - b) Installing manufactured products for which the FAA has issued a waiver as indicated by inclusion on the current FAA Nationwide Buy American Waivers Issued listing; or
 - c) Installing products listed as an Excepted Article, Material or Supply in Federal Acquisition Regulation Subpart 25.108.

By selecting this certification statement, the bidder or offeror agrees:

1. To provide to the Owner evidence that documents the source and origin of the steel and manufactured product.
 2. To faithfully comply with providing US domestic products
 3. To refrain from seeking a waiver request after establishment of the contract, unless extenuating circumstances emerge that the FAA determines justified.
- ☐ The bidder or offeror hereby certifies it cannot comply with the 100 percent Buy American Preferences of 49 USC § 50101(a) but may qualify for either a Type 3 or Type 4 waiver under 49 USC § 50101(b). By selecting this certification statement, the apparent bidder or offeror with the apparent low bid agrees:
1. To the submit to the Owner within 15 calendar days of the bid opening, a formal waiver request and required documentation that support the type of waiver being requested.
 2. That failure to submit the required documentation within the specified timeframe is cause for a non-responsive determination may results in rejection of the proposal.
 3. To faithfully comply with providing U.S. domestic products at or above the approved US domestic content percentage as approved by the FAA.
 4. To furnish US domestic product for any waiver request that the FAA rejects.
 5. To refrain from seeking a waiver request after establishment of the contract, unless extenuating circumstances emerge that the FAA determines justified.

Required Documentation

Type 3 Waiver - The cost of components and subcomponents produced in the United States is more that 60 percent of the cost of all components and subcomponents of the “facility”. The required documentation for a type 3 waiver is:

- a) Listing of all manufactured products that are not comprised of 100 percent U.S. domestic content (excludes products listed on the FAA Nationwide Buy American

Waivers Issued listing and products excluded by Federal Acquisition Regulation Subpart 25.108; products of unknown origin must be considered as non-domestic products in their entirety)

- b) Cost of non-domestic components and subcomponents, excluding labor costs associated with final assembly and installation at project location.
- c) Percentage of non-domestic component and subcomponent cost as compared to total “facility” component and subcomponent costs, excluding labor costs associated with final assembly and installation at project location.

Type 4 Waiver – Total cost of project using U.S. domestic source product exceeds the total project cost using non-domestic product by 25 percent. The required documentation for a type 4 of waiver is:

- a) Detailed cost information for total project using U.S. domestic product
- b) Detailed cost information for total project using non-domestic product

False Statements: Per 49 USC § 47126, this certification concerns a matter within the jurisdiction of the Federal Aviation Administration and the making of a false, fictitious or fraudulent certification may render the maker subject to prosecution under Title 18, United States Code.

Date

Signature

Company Name

Title

* * * * *

Certificate of Buy American Compliance for Manufactured Products

(Non-building construction projects, equipment acquisition projects)

As a matter of bid responsiveness, the bidder or offeror must complete, sign, date, and submit this certification statement with their proposal. The bidder or offeror must indicate how they intend to comply with 49 USC § 50101 by selecting one on the following certification statements. These statements are mutually exclusive. Bidder must select one or the other (not both) by inserting a checkmark (✓) or the letter “X”.

- ☐ Bidder or offeror hereby certifies that it will comply with 49 USC § 50101 by:
- a) Only installing steel and manufactured products produced in the United States, or;
 - b)
 - c) Installing products listed as an Excepted Article, Material or Supply in Federal Acquisition Regulation Subpart 25.108.

By selecting this certification statement, the bidder or offeror agrees:

1. To provide to the Owner evidence that documents the source and origin of the steel and manufactured product.
 2. To faithfully comply with providing US domestic product
 3. To furnish US domestic product for any waiver request that the FAA rejects
 4. To refrain from seeking a waiver request after establishment of the contract, unless extenuating circumstances emerge that the FAA determines justified.
- ☐ The bidder or offeror hereby certifies it cannot comply with the 100 percent Buy American Preferences of 49 USC § 50101(a) but may qualify for either a Type 3 or Type 4 waiver under 49 USC § 50101(b). By selecting this certification statement, the apparent bidder or offeror with the apparent low bid agrees:
1. To the submit to the Owner within 15 calendar days of the bid opening, a formal waiver request and required documentation that supports the type of waiver being requested.
 2. That failure to submit the required documentation within the specified timeframe is cause for a non-responsive determination may result in rejection of the proposal.
 3. To faithfully comply with providing US domestic products at or above the approved US domestic content percentage as approved by the FAA.
 4. To refrain from seeking a waiver request after establishment of the contract, unless extenuating circumstances emerge that the FAA determines justified.

Required Documentation

Type 3 Waiver - The cost of the item components and subcomponents produced in the United States is more that 60 percent of the cost of all components and subcomponents of the “item”. The required documentation for a type 3 waiver is:

- a) Listing of all product components and subcomponents that are not comprised of 100 percent U.S. domestic content (Excludes products listed on the FAA Nationwide Buy American Waivers Issued listing and products excluded by Federal Acquisition Regulation Subpart 25.108; products of unknown origin must be considered as non-domestic products in their entirety).
- b) Cost of non-domestic components and subcomponents, excluding labor costs associated with final assembly at place of manufacture.
- c) Percentage of non-domestic component and subcomponent cost as compared to total “item” component and subcomponent costs, excluding labor costs associated with final assembly at place of manufacture.

Type 4 Waiver – Total cost of project using U.S. domestic source product exceeds the total project cost using non-domestic product by 25 percent. The required documentation for a type 4 of waiver is:

- a) Detailed cost information for total project using U.S. domestic product
- b) Detailed cost information for total project using non-domestic product

False Statements: Per 49 USC § 47126, this certification concerns a matter within the jurisdiction of the Federal Aviation Administration and the making of a false, fictitious or fraudulent certification may render the maker subject to prosecution under Title 18, United States Code.

Date

Signature

Company Name

Title

A. GENERAL CIVIL RIGHTS PROVISIONS (REFERENCE: 49 USC § 47123)

The Contractor agrees to comply with pertinent statutes, Executive Orders and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance.

This provision binds the Contractor and subcontractors from the bid solicitation period through the completion of the contract. This provision is in addition to that required of Title VI of the Civil Rights Act of 1964.

B. TITLE VI SOLICITATION NOTICE

(Source: Appendix 4 of FAA Order 1400.11, Nondiscrimination in Federally-Assisted Programs at the Federal Aviation Administration)

Title VI Solicitation Notice:

The Port Authority, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. §§ 2000d to 2000d-4) and the Regulations, hereby notifies all bidders that it will affirmatively ensure that any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full and fair opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.

i. Title VI Clauses for Compliance with Nondiscrimination Requirements

(Source: Appendix A of Appendix 4 of FAA Order 1400.11, Nondiscrimination in Federally-Assisted Programs at the Federal Aviation Administration)

Compliance with Nondiscrimination Requirements

During the performance of this contract, the Contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the “Contractor”) agrees as follows:

1. **Compliance with Regulations:** The Contractor (hereinafter includes consultants) will comply with the Title VI List of Pertinent Nondiscrimination Acts and Authorities, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
2. **Nondiscrimination:** The Contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Contractor will not participate directly or indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.
3. **Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding or negotiation made by the Contractor for

work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the Contractor of the contractor's obligations under this contract and the Nondiscrimination Acts and the Authorities on the grounds of race, color, or national origin.

4. **Information and Reports:** The Contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the sponsor or the Federal Aviation Administration to be pertinent to ascertain compliance with such Nondiscrimination Acts Authorities and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the Contractor will so certify to the sponsor or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.
5. **Sanctions for Noncompliance:** In the event of a Contractor's noncompliance with the Non-discrimination provisions of this contract, the sponsor will impose such contract sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to:
 - c. Withholding payments to the Contractor under the contract until the contractor complies; and/or
 - d. Cancelling, terminating, or suspending a contract, in whole or in part.
6. **Incorporation of Provisions:** The Contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations, and directives issued pursuant thereto. The Contractor will take action with respect to any subcontract or procurement as the sponsor or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the Contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the Contractor may request the sponsor to enter into any litigation to protect the interests of the sponsor. In addition, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.

ii. Title VI List of Pertinent Nondiscrimination Authorities

(Source: Appendix E of Appendix 4 of FAA Order 1400.11, Nondiscrimination in Federally-Assisted Programs at the Federal Aviation Administration)

During the performance of this contract, the Contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "Contractor") agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*, 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin);
- 49 CFR part 21 (Non-discrimination in Federally-assisted programs of the Department of Transportation—Effectuation of Title VI of The Civil Rights Act of 1964);

- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 *et seq.*), as amended, (prohibits discrimination on the basis of disability); and 49 CFR part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 *et seq.*), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131 – 12189) as implemented by Department of Transportation regulations at 49 CFR parts 37 and 38;
- The Federal Aviation Administration’s Nondiscrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 *et seq.*).

C. CLEAN AIR AND WATER POLLUTION CONTROL (REFERENCE: 2 CFR § 200 APPENDIX II(G)) (APPLIES TO ALL PROFESSIONAL SERVICE

AGREEMENTS, CONSTRUCTION CONTRACTS AND SUBCONTRACTS THAT EXCEED \$150,000.)

Contractor agrees to comply with all applicable standards, orders, and regulations issued pursuant to the Clean Air Act (42 USC § 740-7671q) and the Federal Water Pollution Control Act as amended (33 USC § 1251-1387). The Contractor agrees to report any violation to the Owner immediately upon discovery. The Owner assumes responsibility for notifying the Environmental Protection Agency (EPA) and the Federal Aviation Administration.

D. CONTRACT WORKHOURS AND SAFETY STANDARDS ACT REQUIREMENTS (REFERENCE: 2 CFR § 200 APPENDIX II (E)) (APPLIES TO ALL PROFESSIONAL SERVICE AGREEMENTS, CONSTRUCTION CONTRACTS AND SUBCONTRACTS THAT EXCEED \$100,000)

1. Overtime Requirements

No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic, including watchmen and guards, in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

2. Violation; Liability for Unpaid Wages; Liquidated Damages.

In the event of any violation of the clause set forth in paragraph (1) of this clause, the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this clause, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this clause.

3. Withholding for Unpaid Wages and Liquidated Damages.

The Federal Aviation Administration or the Owner shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any monies payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this clause.

4. Subcontractors.

The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs (1) through (4) and also a clause requiring the subcontractor to include these clauses in any lower

tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this clause.

E. COPELAND “ANTI-KICKBACK” ACT (REFERENCE: 2 CFR § 200 APPENDIX II(D), 29 CFR PARTS 3 AND 5) (APPLIES TO ALL CONTRACTS AND SUBCONTRACTS THAT EXCEED \$2,000)

Contractor must comply with the requirements of the Copeland “Anti-Kickback” Act (18 USC 874 and 40 USC 3145), as supplemented by Department of Labor regulation 29 CFR part 3. Contractor and subcontractors are prohibited from inducing, by any means, any person employed on the project to give up any part of the compensation to which the employee is entitled. The Contractor and each Subcontractor must submit to the Owner, a weekly statement on the wages paid to each employee performing on covered work during the prior week. Owner must report any violations of the Act to the Federal Aviation Administration.

F. DAVIS-BACON REQUIREMENTS (REFERENCE: 2 CFR § 200 APPENDIX II(D)) (APPLIES TO ALL CONTRACTS AND SUBCONTRACTS THAT EXCEED \$2,000)

1. Minimum Wages.

(i) All laborers and mechanics employed or working upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by the Secretary of Labor under the Copeland Act (29 CFR Part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalent thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the Contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR Part 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: *Provided*, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under (1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the Contractor and its subcontractors at the site of the work in a prominent and accessible place where it can easily be seen by the workers.

(ii)(A) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer

shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(1) The work to be performed by the classification requested is not performed by a classification in the wage determination;

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, D.C. 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(C) In the event the Contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to subparagraphs (1)(ii) (B) or (C) of this paragraph, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, *Provided* that the Secretary of Labor has found, upon the written request of the Contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

2. Withholding.

The Federal Aviation Administration or the sponsor shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be

withheld from the Contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the Contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of work, all or part of the wages required by the contract, the Federal Aviation Administration may, after written notice to the Contractor, Sponsor, Applicant, or Owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

3. Payrolls and basic records.

(i) Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the Contractor shall maintain records that show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and that show the costs anticipated or the actual costs incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)(A) The Contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the Federal Aviation Administration if the agency is a party to the contract, but if the agency is not such a party, the Contractor will submit the payrolls to the applicant, Sponsor, or Owner, as the case may be, for transmission to the Federal Aviation Administration. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (*e.g.* the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker and shall provide them upon request to the Federal Aviation Administration if the agency is a party to the contract, but if the agency is not such a party, the Contractor will submit them to the applicant, sponsor, or Owner, as the case may be, for transmission to the Federal Aviation Administration, the Contractor, or the Wage and Hour Division of the Department of Labor for

purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the sponsoring government agency (or the applicant, Sponsor, or Owner).

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the Contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be provided under 29 CFR § 5.5(a)(3)(ii), the appropriate information is being maintained under 29 CFR § 5.5 (a)(3)(i) and that such information is correct and complete;

(2) That each laborer and mechanic (including each helper, apprentice and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations 29 CFR Part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the Contractor or subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 231 of Title 31 of the United States Code.

(iii) The Contractor or subcontractor shall make the records required under paragraph (3)(i) of this section available for inspection, copying or transcription by authorized representatives of the sponsor, the Federal Aviation Administration or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the Contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the Contractor, Sponsor, applicant, or Owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

4. Apprentices and Trainees.

(i) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an

apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the Contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the Contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate that is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the Contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal Employment Opportunity. The utilization of apprentices, trainees, and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.

5. Compliance with Copeland Act Requirements.

The Contractor shall comply with the requirements of 29 CFR Part 3, which are incorporated by reference in this contract.

6. Subcontracts.

The Contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR Part 5.5(a)(1) through (10) and such other clauses as the Federal Aviation Administration may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR Part 5.5.

7. Contract Termination: Debarment.

A breach of the contract clauses in paragraph 1 through 10 of this section may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

8. Compliance with Davis-Bacon and Related Act Requirements.

All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR Parts 1, 3, and 5 are herein incorporated by reference in this contract.

9. Disputes Concerning Labor Standards.

Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR Parts 5, 6 and 7. Disputes within the meaning of this clause include disputes between the Contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

10. Certification of Eligibility.

(i) By entering into this contract, the Contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

G. CERTIFICATE REGARDING DEBARMENT AND SUSPENSION (BIDDER OR OFFEROR) (REFERENCE: 2 CFR PART 180 (SUBPART C), 2 CFR PART 1200, DOT ORDER 4200.5 DOT SUSPENSION & DEBARMENT

**PROCEDURES & INELIGIBILITY) (APPLIES TO ALL CONTRACTS THAT ARE
EXPECTED TO EQUAL OR EXCEED \$25,000)**

**CERTIFICATE REGARDING DEBARMENT AND SUSPENSION (BIDDER OR
OFFEROR)**

1. The bidder or offeror, _____, certifies by submission of this bid or proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
2. Where the bidder or offeror is unable to certify to any of the statements in this certification, such bidder or offeror shall attach an explanation to this proposal.
3. The bidder or offeror shall provide immediate written notice to the Port Authority (and the Contractor, if applicable) if at any time the bidder or offeror learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

Executed this day _____ of _____, 20_____.

BY SIGNATURE OF AUTHORIZED OFFICIAL

NAME AND TITLE OF AUTHORIZED OFFICIAL

CERTIFICATION REGARDING DEBARMENT AND SUSPENSION (SUCCESSFUL BIDDER REGARDING LOWER TIER PARTICIPANTS)

The successful bidder, by administering each lower tier subcontract that exceeds \$25,000 as a “covered transaction”, must verify each lower tier participant of a “covered transaction” under the project is not presently debarred or otherwise disqualified from participation in this federally assisted project. The successful bidder will accomplish this by:

1. Checking the System for Award Management at website: <http://www.sam.gov>.
2. Collecting a certification statement similar to the Certificate Regarding Debarment and Suspension (Bidder or Offeror), above.
3. Inserting a clause or condition in the covered transaction with the lower tier contract.

If the Federal Aviation Administration later determines that a lower tier participant failed to tell a higher tier that it was excluded or disqualified at the time it entered the covered transaction, the FAA may pursue any available remedy, including suspension and debarment of the non-compliant participant.

H. DISADVANTAGED BUSINESS ENTERPRISES (REFERENCE: 49 CFR PART 26) (APPLIES TO ALL AIP FUNDED CONTRACTS)

(Solicitations That Include a Project Goal)

Information Submitted as a matter of bidder responsiveness:

The Owner’s award of this contract is conditioned upon Bidder or Offeror satisfying the good faith effort requirements of 49 CFR §26.53.

As a condition of bid responsiveness, the Bidder or Offeror must submit the following information with its proposal on the forms provided herein:

- 1) The names and addresses of Disadvantaged Business Enterprise (DBE) firms that will participate in the contract;
- 2) A description of the work that each DBE firm will perform;
- 3) The dollar amount of the participation of each DBE firm listed under (1)
- 4) Written statement from Bidder or Offeror that attests their commitment to use the DBE firm(s) listed under (1) to meet the Owner’s project goal; and
- 5) If Bidder or Offeror cannot meet the advertised project DBE goal, evidence of good faith efforts undertaken by the Bidder or Offeror as described in appendix A to 49 CFR part 26.

Information submitted as a matter of bidder responsibility:

The Owner’s award of this contract is conditioned upon Bidder or Offeror satisfying the good faith effort requirements of 49 CFR §26.53.

The successful Bidder or Offeror must provide written confirmation of participation from each of the DBE firms the Bidder or Offeror lists in its commitment within five days after bid opening.

- 1) The names and addresses of Disadvantaged Business Enterprise (DBE) firms that will participate in the contract;
- 2) A description of the work that each DBE firm will perform;
- 3) The dollar amount of the participation of each DBE firm listed under (1)

- 4) Written statement from Bidder or Offeror that attests their commitment to use the DBE firm(s) listed under (1) to meet the Owner's project goal; and
- 5) If Bidder or Offeror cannot meet the advertised project DBE goal, evidence of good faith efforts undertaken by the Bidder or Offeror as described in appendix A to 49 CFR part 26.

(Race/Gender Neutral Means)

The requirements of 49 CFR part 26 apply to this contract. It is the policy of Authority to practice nondiscrimination based on race, color, sex, or national origin in the award or performance of this contract. The Owner encourages participation by all firms qualifying under this solicitation regardless of business size or ownership.

Prime Contracts (Projects Covered by a DBE Program)

The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of Department of Transportation-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the Owner deems appropriate, which may include, but is not limited to:

- 1) Withholding monthly progress payments;
- 2) Assessing sanctions;
- 3) Liquidated damages; and/or
- 4) Disqualifying the Contractor from future bidding as non-responsible.

Prompt Payment (§26.29)- The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than {specify number} days from the receipt of each payment the prime contractor receives from {Name of recipient}. The prime contractor agrees further to return retainage payments to each subcontractor within {specify the same number as above} days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the {Name of Recipient}. This clause applies to both DBE and non-DBE subcontractors.

I. TEXTING WHILE DRIVING (REFERENCE: EXECUTIVE ORDER 13513, DOT ORDER 3902.10) APPLIES TO ALL AIP FUNDED CONTRACTS THAT EXCEED THE MICRO-PURCHASE THRESHOLD OF 2 CFR§200.67 (currently set at \$3,500))

In accordance with Executive Order 13513, “Federal Leadership on Reducing Text Messaging While Driving”, (10/1/2009) and DOT Order 3902.10, “Text Messaging While Driving”, (12/30/2009), the Federal Aviation Administration encourages recipients of Federal grant funds to adopt and enforce safety policies that decrease crashes by distracted drivers, including policies to ban text messaging while driving when performing work related to a grant or subgrant.

In support of this initiative, the Owner encourages the Contractor to promote policies and initiatives for its employees and other work personnel that decrease crashes by distracted drivers, including policies that ban text messaging while driving motor vehicles while performing work activities associated with the project. The Contractor must include the substance of this clause in all sub-tier contracts exceeding \$3,500 that involve driving a motor vehicle in performance of work activities associated with the project.

J. ENERGY CONSERVATION REQUIREMENTS (REFERENCE: 2 CFR § 200 APPENDIX II(H)) (MUST BE INCLUDED IN ALL CONTRACTS AND SUBCONTRACTS)

Contractor and Subcontractor agree to comply with mandatory standards and policies relating to energy efficiency as contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 USC 6201 *et seq*).

K. EQUAL OPPORTUNITY CLAUSE (REFERENCE: 2 CFR 200, APPENDIX II(C), 41 CFR § 60-1.4, 41 CFR § 60-4.3, EXECUTIVE ORDER 11246) (APPLIES TO ALL CONSTRUCTION CONTRACTS AND SUBCONTRACTS THAT EXCEED \$10,000)

During the performance of this contract, the Contractor agrees as follows:

(1) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff, or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(2) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, or national origin.

(3) The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the Contractor's commitments under this section,

and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(4) The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(5) The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(6) In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(7) The Contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: *Provided, however*, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

STANDARD FEDERAL EQUAL EMPLOYMENT OPPORTUNITY CONSTRUCTION CONTRACT SPECIFICATIONS

1. As used in these specifications:

- a. "Covered area" means the geographical area described in the solicitation from which this contract resulted;
- b. "Director" means Director, Office of Federal Contract Compliance Programs (OFCCP), U.S. Department of Labor, or any person to whom the Director delegates authority;
- c. "Employer identification number" means the Federal social security number used on the Employer's Quarterly Federal Tax Return, U.S. Treasury Department Form 941;
- d. "Minority" includes:

(1) Black (all) persons having origins in any of the Black African racial groups not of Hispanic origin);

(2) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin regardless of race);

(3) Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands); and

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

2. Whenever the Contractor, or any subcontractor at any tier, subcontracts a portion of the work involving any construction trade, it shall physically include in each subcontract in excess of \$10,000 the provisions of these specifications and the Notice which contains the applicable goals for minority and female participation and which is set forth in the solicitations from which this contract resulted.

3. If the contractor is participating (pursuant to 41 CFR 60-4.5) in a Hometown Plan approved by the U.S. Department of Labor in the covered area either individually or through an association, its affirmative action obligations on all work in the Plan area (including goals and timetables) shall be in accordance with that Plan for those trades which have unions participating in the Plan.

Contractors shall be able to demonstrate their participation in and compliance with the provisions of any such Hometown Plan. Each contractor or subcontractor participating in an approved plan is individually required to comply with its obligations under the EEO clause and to make a good faith effort to achieve each goal under the Plan in each trade in which it has employees. The overall good faith performance by other contractors or subcontractors toward a goal in an approved Plan does not excuse any covered contractor's or subcontractor's failure to take good faith efforts to achieve the Plan goals and timetables.

4. The Contractor shall implement the specific affirmative action standards provided in paragraphs 7a through 7p of these specifications. The goals set forth in the solicitation from which this contract resulted are expressed as percentages of the total hours of employment and training of minority and female utilization the Contractor should reasonably be able to achieve in each construction trade in which it has employees in the covered area. Covered construction contractors performing construction work in a geographical area where they do not have a Federal or federally assisted construction contract shall apply the minority and female goals established for the geographical area where the work is being performed. Goals are published periodically in the Federal Register in notice form, and such notices may be obtained from any Office of Federal Contract Compliance Programs office or from Federal procurement contracting officers. The Contractor is expected to make substantially uniform progress in meeting its goals in each craft during the period specified.

5. Neither the provisions of any collective bargaining agreement nor the failure by a union with whom the Contractor has a collective bargaining agreement to refer either minorities or women shall excuse the contractor's obligations under these specifications, Executive Order 11246 or the regulations promulgated pursuant thereto.

6. In order for the non-working training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees shall be employed by the Contractor during the training period and the Contractor shall have made a commitment to employ the apprentices and trainees at

the completion of their training, subject to the availability of employment opportunities. Trainees shall be trained pursuant to training programs approved by the U.S. Department of Labor.

7. The Contractor shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of the Contractor's compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. The Contractor shall document these efforts fully and shall implement affirmative action steps at least as extensive as the following:

a. Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the Contractor's employees are assigned to work. The Contractor, where possible, will assign two or more women to each construction project. The Contractor shall specifically ensure that all foremen, superintendents, and other onsite supervisory personnel are aware of and carry out the contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.

b. Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the Contractor or its unions have employment opportunities available, and maintain a record of the organizations' responses.

c. Maintain a current file of the names, addresses, and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source, or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the Contractor by the union or, if referred, not employed by the Contractor, this shall be documented in the file with the reason therefore along with whatever additional actions the Contractor may have taken.

d. Provide immediate written notification to the Director when the union or unions with which the Contractor has a collective bargaining agreement has not referred to the contractor a minority person or female sent by the Contractor, or when the Contractor has other information that the union referral process has impeded the Contractor's efforts to meet its obligations.

e. Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the Contractor's employment needs, especially those programs funded or approved by the Department of Labor. The contractor shall provide notice of these programs to the sources compiled under 7b above.

f. Disseminate the Contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the Contractor in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the company EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.

g. Review, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment,

layoff, termination, or other employment decisions including specific review of these items with onsite supervisory personnel such as superintendents, general foremen, etc., prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.

h. Disseminate the Contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the Contractor's EEO policy with other contractors and subcontractors with whom the Contractor does or anticipates doing business.

i. Direct its recruitment efforts, both oral and written, to minority, female, and community organizations, to schools with minority and female students; and to minority and female recruitment and training organizations serving the Contractor's recruitment area and employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source, the Contractor shall send written notification to organizations, such as the above, describing the openings, screening procedures, and tests to be used in the selection process.

j. Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer, and vacation employment to minority and female youth both on the site and in other areas of a contractor's workforce.

k. Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR part 60-3.

l. Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel, for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities.

m. Ensure that seniority practices, job classifications, work assignments, and other personnel practices do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the Contractor's obligations under these specifications are being carried out.

n. Ensure that all facilities and company activities are non-segregated except that separate or single user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.

o. Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.

p. Conduct a review, at least annually, of all supervisor's adherence to and performance under the Contractor's EEO policies and affirmative action obligations.

8. Contractors are encouraged to participate in voluntary associations, which assist in fulfilling one or more of their affirmative action obligations (7a through 7p). The efforts of a contractor association, joint contractor union, contractor community, or other similar groups of which the Contractor is a member and participant may be asserted as fulfilling any one or more of its obligations under 7a through 7p of these specifications provided that the Contractor actively

participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the Contractor's minority and female workforce participation, makes a good faith effort to meet its individual goals and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation to comply, however, is the Contractor's and failure of such a group to fulfill an obligation shall not be a defense for the Contractor's noncompliance.

9. A single goal for minorities and a separate single goal for women have been established. The Contractor, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, if the particular group is employed in a substantially disparate manner (for example, even though the Contractor has achieved its goals for women generally,) the Contractor may be in violation of the Executive Order if a specific minority group of women is underutilized.

10. The Contractor shall not use the goals and timetables or affirmative action standards to discriminate against any person because of race, color, religion, sex, or national origin.

11. The Contractor shall not enter into any subcontract with any person or firm debarred from Government contracts pursuant to Executive Order 11246.

12. The Contractor shall carry out such sanctions and penalties for violation of these specifications and of the Equal Opportunity Clause, including suspension, termination, and cancellation of existing subcontracts as may be imposed or ordered pursuant to Executive Order 11246, as amended, and its implementing regulations, by the Office of Federal Contract Compliance Programs. Any contractor who fails to carry out such sanctions and penalties shall be in violation of these specifications and Executive Order 11246, as amended.

13. The Contractor, in fulfilling its obligations under these specifications, shall implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph 7 of these specifications, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the Contractor fails to comply with the requirements of the Executive Order, the implementing regulations, or these specifications, the Director shall proceed in accordance with 41 CFR part 60-4.8.

14. The Contractor shall designate a responsible official to monitor all employment related activity to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required by the Government, and to keep records. Records shall at least include for each employee, the name, address, telephone number, construction trade, union affiliation if any, employee identification number when assigned, social security number, race, sex, status (e.g., mechanic, apprentice, trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, contractors shall not be required to maintain separate records.

15. Nothing herein provided shall be construed as a limitation upon the application of other laws which establish different standards of compliance or upon the application of requirements for the hiring of local or other area residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

L. FEDERAL FAIR LABOR STANDARDS ACT (FEDERAL MINIMUM WAGE) (REFERENCE: 29 USC § 201, ET SEQ.)

All contracts and subcontracts that result from this solicitation incorporate the following provisions by reference, with the same force and effect as if given in full text. The Contractor has full responsibility to monitor compliance to the referenced statute or regulation. The Contractor must address any claims or disputes that arise from this requirement directly with the U.S. Department of Labor Wage and Hour Division.

**M. LOBBYING AND INFLUENCING FEDERAL EMPLOYEES
(REFERENCE: 31 USC § 1352-BYRD ANTI-LOBBYING AMENDMENT, 2 CFR PART 200, APPENDIX II(J) 49 CFR PART 20, APPENDIX A)**

CERTIFICATION OF LOBBYING

The Bidder or Offeror certifies by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that

- No Federal appropriated funds have been paid or will be paid, by or on behalf of the Bidder or Offeror, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form LLL, "Disclosure of Lobbying, Activities" in accordance with its instructions.
- The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Executed this day _____ of _____, 20

By: _____
Signature of Authorized Official

Official Name and Title of Authorized Official

STANDARD FORM LLL - DISCLOSURE OF LOBBYING ACTIVITIES

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352

1. Type of Federal Action: ____ a. contract ____ b. grant ____ c. cooperative agreement ____ d. loan ____ e. loan guarantee ____ f. loan insurance	2. Status of Federal Action: ____ a. bid/offer/application ____ b. initial award ____ c. post award	3. Report Type: ____ a. initial filing ____ b. material change For material change only: Year _____ quarter _____ Date of last report _____
4. Name and Address of Reporting Entity: ____ Prime ____ Subawardee Tier _____, if Known: Congressional District, if known:		5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime: Congressional District, if known:
6. Federal Department/Agency:	7. Federal Program Name/Description: CFDA Number, if applicable: _____	
8. Federal Action Number, if known:	9. Award Amount, if known: \$	
10. a. Name and Address of Lobbying Registrant <i>(if individual, last name, first name, MI):</i>	b. Individuals Performing Services (including address if different from No. 10a) <i>(last name, first name, MI):</i>	
11. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.	Signature: _____ Print Name: _____ Title: _____ Telephone No.: _____ Date: _____	
Federal Use Only	Authorized for Local Reproduction Standard Form - LLL (Rev. 7-97)	

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. Section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

2. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.
3. Identify the status of the covered Federal action.
4. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.
5. Enter the full name, address, city, State and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.
6. If the organization filing the report in item 4 checks "Subawardee," then enter the full name, address, city, State and zip code of the prime Federal recipient. Include Congressional District, if known.
7. Enter the name of the federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
8. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.
9. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitations for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Included prefixes, e.g., "RFP-DE-90-001."
10. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.
11. (a) Enter the full name, address, city, State and zip code of the lobbying registrant under the Lobbying Disclosure Act of 1995 engaged by the reporting entity identified in item 4 to influence the covered Federal action.
(b) Enter the full names of the individual(s) performing services, and include full address if different from 10(a). Enter Last Name, First Name, and Middle Initial (MI).
12. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

According to the Paperwork Reduction Act, as amended, no persons are required to respond to a collection of information unless it displays a valid OMB control Number. The valid OMB control number for this information collection is OMB No. 0348-0046. Public reporting burden for this collection of information is estimated to average 10 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, DC 20503

N. PROHIBITION OF SEGREGATED FACILITIES (REFERENCE: 41 CFR § 60)(APPLIES TO ALL CONTRACTS AND SUBCONTRACTS THAT EXCEED \$10,000)

(a) The Contractor agrees that it does not and will not maintain or provide for its employees any segregated facilities at any of its establishments, and that it does not and will not permit its employees to perform their services at any location under its control where segregated facilities are maintained. The Contractor agrees that a breach of this clause is a violation of the Equal Employment Opportunity clause in this contract.

(b) "Segregated facilities," as used in this clause, means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees that are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, sex, or national origin because of written or oral policies or employee custom. The term does not include separate or single-user rest rooms or necessary dressing or sleeping areas provided to assure privacy between the sexes.

(c) The Contractor shall include this clause in every subcontract and purchase order that is subject to the Equal Employment Opportunity clause of this contract.

O. OCCUPATIONAL SAFETY AND HEALTH ACT OF 1970 (REFERENCE: 29 CFR PART 1910)

All contracts and subcontracts that result from this solicitation incorporate by reference the requirements of 29 CFR Part 1910 with the same force and effect as if given in full text. The employer must provide a work environment that is free from recognized hazards that may cause death or serious physical harm to the employee. The employer retains full responsibility to monitor its compliance and their subcontractor's compliance with the applicable provisions of the Occupational Safety and Health Act of 1970 (29 CFR Part 1910). The employer must address any claims or disputes that pertain to a referenced requirement directly with the U.S. Department of Labor – Occupational Safety and Health Administration.

P. PROCUREMENT OF RECOVERED MATERIALS (REFERENCE: 2 CFR § 200.322, 40 CFR PART 247, SOLID WASTE DISPOSAL ACT)

Contractor and subcontractor agree to comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, and the regulatory provisions of 40 CFR Part 247. In the performance of this contract and to the extent practicable, the Contractor and subcontractors are to use products containing the highest percentage of recovered materials for items designated by the Environmental Protection Agency (EPA) under 40 CFR Part 247 whenever:

- 1) The contract requires procurement of \$10,000 or more of a designated item during the fiscal year; or
- 2) The contractor has procured \$10,000 or more of a designated item using Federal funding during the previous fiscal year.

The list of EPA-designated items is available at www.epa.gov/smm/comprehensive-procurement-guidelines-construction-products.

Section 6002(c) establishes exceptions to the preference for recovery of EPA-designated products if the contractor can demonstrate the item is:

- a) Not reasonably available within a timeframe providing for compliance with the contract performance schedule;
- b) Fails to meet reasonable contract performance requirements; or
- c) Is only available at an unreasonable price.

Q. RIGHTS TO INVENTIONS (Reference: 2 CFR § 200 Appendix II(F))

Contracts or agreements that include the performance of experimental, developmental, or research work must provide for the rights of the Federal Government and the Owner in any resulting invention as established by 37 CFR part 401, Rights to Inventions Made by Non-profit Organizations and Small Business Firms under Government Grants, Contracts, and Cooperative Agreements. This contract incorporates by reference the patent and inventions rights as specified within 37 CFR §401.14. Contractor must include this requirement in all sub-tier contracts involving experimental, developmental, or research work.

R. SEISMIC SAFETY (Reference: 49 CFR part 41)

If this contract is for Design Services, the following clause applies:

In the performance of design services, the Consultant agrees to furnish a building design and associated construction specification that conform to a building code standard that provides a level of seismic safety substantially equivalent to standards as established by the National Earthquake Hazards Reduction Program (NEHRP). Local building codes that model their building code after the current version of the International Building Code (IBC) meet the NEHRP equivalency level for seismic safety. At the conclusion of the design services, the Consultant agrees to furnish the Owner a “certification of compliance” that attests conformance of the building design and the construction specifications with the seismic standards of NEHRP or an equivalent building code.

If this is a Construction Contract, the following clause applies:

The Contractor agrees to ensure that all work performed under this contract, including work performed by subcontractors, conforms to a building code standard that provides a level of seismic safety substantially equivalent to standards established by the National Earthquake Hazards Reduction Program (NEHRP). Local building codes that model their code after the current version of the International Building Code (IBC) meet the NEHRP equivalency level for seismic safety.

S. TAX DELINQUENCY AND FELONY CONVICTIONS (REFERENCE: SECTIONS 415 AND 416 OF TITLE IV, DIVISION L OF THE CONSOLIDATED APPROPRIATIONS ACT, 2014 (PUB. L. 113-76), AND SIMILAR PROVISIONS IN SUBSEQUENT APPROPRIATIONS ACTS, AND DOT ORDER 4200.6 - REQUIREMENTS FOR PROCUREMENT AND NON-PROCUREMENT REGARDING TAX DELINQUENCY AND FELONY CONVICTIONS (APPLIES TO ALL CONTRACTS FUNDED IN WHOLE OR IN PART WITH AIP))

CERTIFICATION OF OFFERER/BIDDER REGARDING TAX DELINQUENCY AND FELONY CONVICTIONS

The applicant must complete the following two certification statements. The applicant must indicate its current status as it relates to tax delinquency and felony conviction by inserting a checkmark (✓) in the space following the applicable response. The applicant agrees that, if awarded a contract resulting from this solicitation, it will incorporate this provision for certification in all lower tier subcontracts.

Certifications

- 3) The applicant represents that it is () is not () a corporation that has any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability.
- 4) The applicant represents that it is () is not () is not a corporation that was convicted of a criminal violation under any Federal law within the preceding 24 months.

Note

If an applicant responds in the affirmative to either of the above representations, the applicant is ineligible to receive an award unless the sponsor has received notification from the agency suspension and debarment official (SDO) that the SDO has considered suspension or debarment and determined that further action is not required to protect the Government's interests. The applicant therefore must provide information to the owner about its tax liability or conviction to the Owner, who will then notify the FAA Airports District Office, which will then notify the agency's SDO to facilitate completion of the required considerations before award decisions are made.

- **Term Definitions**

Felony conviction: Felony conviction means a conviction within the preceding twentyfour (24) months of a felony criminal violation under any Federal law and includes conviction of an offense defined in a section of the U.S. code that specifically classifies the offense as a felony and conviction of an offense that is classified as a felony under 18

- U.S.C. § 3559.

Tax Delinquency: A tax delinquency is any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted, or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability.

T. TERMINATION OF CONTRACT (REFERENCE 2 CFR §200 Appendix II(B)) (APPLIES TO ALL CONTRACTS AND SUBCONTRACTS THAT EXCEED \$10,000)

Notwithstanding anything to the contrary elsewhere within this Contract, the Authority may terminate this contract, in whole or in part, at any time by written notice to the Contractor for cause or when it is in the Authority's best interest, pursuant and 2 CFR 200, Appendix II (B) and as set forth in the Contract. In the event of termination for convenience, the Contractor shall be paid its costs, as so provided for in the Contract, on work performed up to the time of termination for convenience.

If this is a Construction Contract:

Section 80-09 of FAA Advisory Circular 150/5370-10 establishes conditions, rights, and remedies associated with Owner termination of this contract due to default of the Contractor.

U. TRADE RESTRICTION CLAUSE (REFERENCE: 49 USC §50104, 49 CFR PART 30)

TRADE RESTRICTION CERTIFICATION

By submission of an offer, the Offeror certifies that with respect to this solicitation and any resultant contract, the Offeror -

- 1) is not owned or controlled by one or more citizens of a foreign country included in the list of countries that discriminate against U.S. firms published by the Office of the United States Trade Representative (USTR);
- 2) has not knowingly entered into any contract or subcontract for this project with a person that is a citizen or national of a foreign country included on the list of countries that discriminate against U.S. firms as published by the USTR; and
- 3) has not entered into any subcontract for any product to be used on the Federal project that is produced in a foreign country included on the list of countries that discriminate against U.S. firms published by the USTR.

This certification concerns a matter within the jurisdiction of an agency of the United States of America and the making of a false, fictitious, or fraudulent certification may render the maker subject to prosecution under Title 18 USC Section 1001.

The Offeror/Contractor must provide immediate written notice to the Owner if the Offeror/Contractor learns that its certification or that of a subcontractor was erroneous when submitted or has become erroneous by reason of changed circumstances. The Contractor must require subcontractors provide immediate written notice to the Contractor if at any time it learns that its certification was erroneous by reason of changed circumstances.

Unless the restrictions of this clause are waived by the Secretary of Transportation in accordance with 49 CFR 30.17, no contract shall be awarded to an Offeror or subcontractor:

- 1) who is owned or controlled by one or more citizens or nationals of a foreign country included on the list of countries that discriminate against U.S. firms published by the USTR or
- 2) whose subcontractors are owned or controlled by one or more citizens or nationals of a foreign country on such USTR list or
- 3) who incorporates in the public works project any product of a foreign country on such USTR list.

Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the certification required by this provision. The knowledge and information of a contractor is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

The Offeror agrees that, if awarded a contract resulting from this solicitation, it will incorporate this provision for certification without modification in all lower tier subcontracts. The Contractor may rely on the certification of a prospective subcontractor that it is not a firm from a foreign country included on the list of countries that discriminate against U.S. firms as published by USTR, unless the Offeror has knowledge that the certification is erroneous.

This certification is a material representation of fact upon which reliance was placed when making an award. If it is later determined that the Contractor or subcontractor knowingly rendered an erroneous certification, the Federal Aviation Administration (FAA) may direct through the Owner cancellation of the contract or subcontract for default at no cost to the Owner or the FAA.

**V. VETERAN'S PREFERENCE (REFERENCE: 49 USC § 47112(C))
(MUST BE INCLUDED IN ALL CONTRACTS AND SUBCONTRACTS THAT INVOLVE LABOR)**

In the employment of labor (except in executive, administrative, and supervisory positions), the Contractor and all sub-tier contractors must give preference to covered veterans as defined within Title 49 United States Code Section 47112. Covered veterans include Vietnam-era veterans, Persian Gulf veterans, Afghanistan-Iraq war veterans, disabled veterans, and small business concerns (as defined by 15 USC 632) owned and controlled by disabled veterans. However, this preference only applies when there are covered veterans readily available and qualified to perform the work to which the employment relates.

P.A. Agreement #
DATE

FIRM NAME
ADDRESS
CITY, STATE ZIP

Attention: Contact Name, Title

**SUBJECT: REQUEST FOR PROPOSALS FOR INDEFINITE QUANTITY
CONTRACTS FOR PERFORMANCE OF EXPERT PROFESSIONAL
CIVIL ENGINEERING SERVICES (AIRFIELD DESIGN) FOR
FEDERALLY FUNDED PROJECTS AS REQUESTED DURING 2019-2022
(RFP #53251)**

Dear Contact,

1. The Port Authority of New York and New Jersey ("Authority" or "Port Authority"), hereby offers to retain <FIRM NAME> ("the Consultant" or "you") to provide Expert Professional Civil Engineering Services (Airfield Design) on an "As Needed" Basis during 2019 – 2022 ("Services" or "the Project") as more fully set forth in "Attachment A – Scope of Work," which is attached hereto and made a part hereof.

Upon Agreement execution and award of subsequent Task Orders, the Consultant shall comply with the applicable Federal Aviation Administration (FAA) requirements, which are attached hereto entitled "Exhibit I", and made a part hereof.

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

For the purpose of administering this Agreement, the Director has designated *****, <TITLE>, or other such individual as hereafter designated, to act as his/her duly authorized representative. The Project Manager for this project is <NAME>, at tel. (***) ***-****, or email address: *****@panynj.gov.

2. This Agreement shall be signed by you, and the Chief Procurement Officer.

As used herein:

“Agreement” means the writings setting forth in the Scope of Work, terms and conditions for the procurement of Services, as defined hereunder, and shall include but not be limited to the Request for Proposals (“RFP”) and any other attachments, endorsements, schedules, exhibits, drawings, the Authority's acceptance and any written addenda issued over the name of the Authority's Manager, Procurement Department.

“Change Order” means a written modification to an Agreement impacting the requirements set forth in the Agreement.

“Chief Procurement Officer” means the Chief Procurement Officer of the Authority, or his/her duly authorized representatives acting within the scope of the particular authority vested in him/her.

“Chief Engineer” means the Authority’s Chief Engineer, or his successor in duties for the purpose of this Agreement, or one of his authorized representatives for the purpose of this Agreement.

“Manager” means the Program Manager, Project Integration, Project Manager or his designee or his successor in duties for the purpose of this Agreement, or their duly authorized representative for the purpose of this Agreement.

“Port Authority of New York and New Jersey” means the Port Authority of New York and New Jersey and its subsidiaries, including PATH.

3. The term of this Agreement shall commence on XXXXX, XX, 201* (“Effective Date”) and shall continue for a period four (4) years. The Authority reserves the right to extend this Agreement for two (2) additional one (1)-year periods (“Option Periods”). Notification of exercise of said Option Period(s) shall be in writing from the Authority’s representative, with Procurement’s concurrence.

4. Time is of the essence. Your services shall be performed as expeditiously as possible and at the time or times required by the Authority’s representative.

5. In order to effectuate the policy of the Authority, the services provided by the Consultant shall comply with all provisions of federal, state, municipal, local and departmental laws, ordinances, rules, regulations, and orders which would affect or control said services as if the services were being performed for a private corporation, unless the Authority standard is more stringent, in which case the Authority standard shall be followed, or unless the Consultant shall receive a written notification to the contrary signed by the Chief Engineer, in which case the requirements of said notification shall apply.

This Agreement is subject to the insurance requirements set forth in Attachment F, Insurance Requirements.

This Agreement may be funded in whole or in part by the Federal Aviation Administration (FAA).

As a result, Consultant (and its subconsultant(s), regardless of tier) agree to comply with the applicable contract provisions set forth in Exhibit I of this Agreement, as may be revised, or other contract provisions that may be applicable as identified in a Task Order.

6. The Consultant shall meet and consult with Authority staff as requested by the Chief Engineer in connection with the services to be performed herein. Any Contract Drawings and Technical Specifications and other items to be submitted or prepared by the Consultant hereunder shall be subject to the review of the Chief Engineer. The Chief Engineer may disapprove, if in his sole opinion said items are not in accordance with the requirements of this Agreement and sound engineering principles or are impractical, uneconomical, or unsuited in any way for the purpose

for which the contemplated construction is intended. If any of the said items, or any portion thereof, are so disapproved, the Consultant shall forthwith revise them until they meet the approval of the Chief Engineer, but the Consultant will not be compensated under any provision of this Agreement for performance of such revisions. No approval, disapproval or omission to approve or disapprove, however, shall relieve the Consultant of its responsibility, if any, under this Agreement to furnish in accordance with an agreed upon schedule, a complete, practical, economical design and Contract Drawings and Technical Specifications, and corrections and changes thereto, if any, which are best suited for the contemplated construction, done in accordance with sound engineering principles and signed and sealed by a licensed Professional Engineer.

7. When services to be performed by the Consultant include the preparation of contract documents, or the performance of post award services, the Consultant shall submit its specific Quality Control/Assurance Program to the Authority's Project Manager prior to the performance of said services. Upon completion of specific services requested hereunder, the Consultant shall submit a letter to the Authority's Project Manager certifying the Consultant's conformance with the aforementioned Quality Control/Assurance Program.

8. When the services to be performed by the Consultant include the preparation of computer aided design and drafting (CADD) documents, said documents must be prepared using the latest available revision of Autodesk's "AUTOCAD" software or as directed by the Chief Engineer prior to the performance of specific services. All drawings shall be prepared in strict conformance to the Port Authority CADD Standards. All submissions of CADD drawings shall be submitted to the Authority on compact discs, uploaded to the Project Website, or as otherwise required in DWG and DWF format in accordance with the Port Authority CADD Standards.

9. As full compensation for all your services and obligations in connection with the performance of work as defined in Task Order Attachment A, the Authority will pay you the amounts set forth on the dates or at the milestones therein, hereinafter also known as the "Lump Sum".

Amounts shall be paid by check to the account you specify within thirty (30) days of receipt of an invoice provided the Project Manager has confirmed that the specified milestones as outlined in Attachment A have been reached for services rendered and has received from you such records and receipts as the Project Manager may reasonably request. Each invoice shall bear your taxpayer number and the Purchase Order Number supplied by the Authority. Upon receipt of the foregoing, the Chief Engineer will estimate and certify to the Authority the approximate amount of compensation earned by you up to that time which shall be calculated by reference to Attachment A.

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

10. CHANGES

The Authority reserves the right to make changes to the Scope of Work or schedule. The Consultant shall diligently perform all such service without delay even if the Consultant does not agree with any schedule or cost decision of Authority related to changed services. The Consultant must issue any related claim to the Authority within five (5) days of the Authority's request to perform the change. The claim will be considered by the Authority and if accepted, in whole or part, the Authority will issue a Change Order. The provisions of the Agreement relating to the services and its performance shall apply without exception to any changed or additional services required and to the performance thereof, except as may be otherwise provided by written agreement between the Authority and the Consultant. With Procurement's concurrence, the Authority's Representative must authorize in writing the changed or additional services and/or any change to the Amount obligated under the Agreement before it is performed and before the Consultant can be reimbursed for such services.

The Consultant shall immediately notify the Authority, in writing, of any change in the Scope of Work either requested by Authority or desired by the Consultant. Such notice shall be in the form of a Change Request and shall include any proposed schedule adjustments arising from the proposed change to the Scope of Work, if any. The parties shall negotiate in good faith the proposed changes to the Scope of Work identified in the Consultant's Change Request. The amounts that the parties agree upon shall be incorporated into the Agreement by issuance of a Change Order.

The Authority reserves the right to delete any item of the work in whole or in part. Any deletion of work must be authorized in writing by the Authority's Representative. If an item of work is deleted, as set forth in the Section 9, shall be reduced accordingly.

11. DISPUTE RESOLUTION

To resolve all disputes and to prevent litigation, the parties to this Agreement authorize Chief Engineer to decide all questions of any nature whatsoever arising out of, under, or in connection with, or in any way related to, or on account of, this Agreement (including claims in the nature of breach of contract or fraud or misrepresentation before or subsequent to acceptance of Consultant's proposal and claims of a type that are barred by the provisions of this Agreement). Chief Engineer's decision with respect to any question or dispute under this Section shall be conclusive, final, and binding on the parties. The decision may be based on such assistance as Chief Engineer may find desirable.

The effect of Chief Engineer's decision with respect to any question or dispute under this Section shall not be impaired or waived by any negotiations or settlement offers in connection with the question or dispute decided, whether or not Chief Engineer participated therein, or by any prior decision of the Port Authority or others, which prior decisions shall be deemed subject to review, or by any termination or cancellation of this Agreement.

All such questions or disputes under this Section shall be submitted in writing by Consultant or the Port Authority to Chief Engineer for decision, together with all evidence and other pertinent information in regard to such question or dispute, in order that a fair and impartial decision may be made. The other party shall have a reasonable time to respond. The Port Authority may join any other entity to the dispute that has a valid dispute resolution agreement with the Port Authority. In any action against the Port Authority relating to any such question or dispute, Consultant must allege in its complaint and prove such submission, which shall be a condition precedent to any

such action. No evidence or information shall be introduced or relied upon in such an action that has not been so presented to Chief Engineer.

12. SUBCONTRACTING

Contractor may subcontract only with the prior written consent of Port Authority, which consent may be withheld at Port Authority's sole and absolute discretion. Every subcontract must provide that it is subject to all of the covenants, terms, provisions and conditions of this Agreement and must provide that in the event of termination or cancellation of this Agreement for any reason whatsoever, prior to the expiration of such subcontract, the subcontract will automatically terminate on the same date this Agreement is terminated or canceled. As required, the Authority reserves the right to have specific subconsultant(s) added to, or removed from this Agreement.

13. You shall keep, and shall cause any subconsultants under this Agreement to keep, daily records of the time spent in the performance of Services hereunder by all persons whose salaries or amounts paid thereto will be the basis for compensation under this Agreement as well as records of the amounts of such salaries and amounts actually paid for the performance of such services and records and receipts of reimbursable expenditures hereunder, and, notwithstanding any other provisions of this Agreement, failure to do so shall be a conclusive waiver of any right to compensation for such services or expenses as are otherwise compensable hereunder. The Authority will have the right to audit all such records.

The Authority will have the right to inspect your records, and those of your subconsultants, pertaining to any compensation to be paid hereunder, such records to be maintained by you and your subconsultants for a period of one year after completion of services to be performed under this Agreement.

14. On or about the fifteenth day of each month, you shall render an invoice for services performed and reimbursable out-of-pocket expenses incurred in the prior month, accompanied by such records and receipts as required, to the Project Manager. Each invoice shall bear your taxpayer number and the purchase order number provided by the Engineer. Upon receipt of the foregoing, the Chief Engineer will estimate and certify to the Authority the approximate amount of compensation earned by you up to that time. As an aid to you, the Authority will, within fifteen days after receipt of such certification by the Chief Engineer, advance to you by check the sum certified minus all prior payments to you for your account.

15. TERMINATION

- a. For Cause. The Authority may at any time for cause terminate this Agreement as to any services not yet rendered, and may terminate this Agreement in whole or in part. You shall have no right of termination as to any services under this Agreement without just cause. Termination by either party shall be by certified letter addressed to the other at its address as set forth herein. Should this Agreement be terminated in whole or in part by either party as above provided, you shall receive no compensation for any services not yet performed.

- b. For Convenience. In addition to all other rights of revocation or termination hereunder and notwithstanding any other provision of this Agreement, the Port Authority may terminate this Agreement and the rights of the Consultant hereunder without cause at any time upon five (5) days written notice to the Consultant and in such event this Agreement shall cease and expire on the date set forth in the notice of termination as fully and completely as though such date were the original expiration date hereof and if such effective date of termination is other than the last day of the month, the amount of the compensation due to the Consultant from the Port Authority shall be prorated when applicable on a daily basis. If termination is without fault on your part, the Authority shall pay you as the full compensation to which you shall be entitled in connection with this Agreement, the amounts computed as above set forth for services completed to the satisfaction of the Chief Engineer, through the date of termination, minus all prior payments to you. Such cancellation shall be without prejudice to the rights and obligations of the parties arising out of portions already performed but no allowance shall be made for anticipated profits.

16. You shall not issue or permit to be issued any press release, advertisement, or literature of any kind, which refers to the Authority or the services performed in connection with this Agreement, unless you first obtain the written approval of the Chief Engineer. Such approval may be withheld if for any reason the Chief Engineer believes that the publication of such information would be harmful to the public interest or is in any way undesirable.

17. Under no circumstances shall you or your subconsultants communicate in any way with any consultant, contractor, department, board, agency, commission or other organization or any person whether governmental or private in connection with the services to be performed hereunder except upon prior written approval and instructions of the Chief Engineer, provided, however that data from manufacturers and suppliers of material shall be obtained by you when you find such data necessary unless otherwise instructed by the Chief Engineer.

18. Any services performed for the benefit of the Authority at any time by you or on your behalf, even services in addition to those described herein, even if expressly and duly authorized by the Authority, shall be deemed to be rendered under and subject to this Agreement (unless referable to another express written, duly executed agreement by the same parties), whether such additional services are performed prior to, during or subsequent to the services described herein, and no rights or obligations shall arise out of such additional services.

19. No certificate, payment (final or otherwise), acceptance of any work or any other act or omission of the Authority or the Chief Engineer shall operate to release you from any obligations under or upon this Agreement, or to estop the Authority from showing at any time that such certificate, payment, acceptance, act or omission was incorrect, or to preclude the Authority from recovering any money paid in excess of that lawfully due, whether under mistake of law or fact, or to prevent the recovery of any damages sustained by the Authority.

20. Mylars of the contract drawings, originals of technical specifications, estimates, reports, records, data, charts, documents, renderings, computations, computer tapes or disks, and other papers of any type whatsoever, whether in the form of writing, figures or delineations, which are prepared or compiled in connection with this Agreement, shall become the property of the

Authority, and the Authority shall have the right to use or permit the use of them and any ideas or methods represented by them for any purpose and at any time without other compensation other than that specifically provided herein. The Consultant hereby warrants and represents that the Authority will have at all times the ownership and rights provided for in the immediately preceding sentence free and clear of all claims of third persons, whether such claims presently exist or arise in the future and whether presently known to either of the parties to this Agreement or not. This Agreement shall not be construed, however, to require the Consultant to obtain for the Consultant and the Authority the right to use any idea, design, method, material, equipment or other matter which is the subject of a valid patent, unless owned by the Consultant, by a subconsultant, or by an employee of either. Whether or not your Proposal is accepted by the Authority, it is agreed that all information of any nature whatsoever which is in any way connected with the services performed in connection with this Agreement, regardless of the form of which has been or may be given by you or on your behalf, whether prior or subsequent to the execution of this Agreement, to the Authority, its Commissioners, officers, agents or employees, is not given in confidence and may be used or disclosed by or on behalf of the Authority without liability of any kind, except as may arise under valid existing or pending patents, if any.

21. If research or development is furnished in connection with the performance of this Agreement and if in the course of such research or development patentable subject matter is produced by the Consultant, its officers, agents, employees, or subconsultants, the Authority shall have, without cost or expense to it, an irrevocable, non-exclusive royalty-free license to make, have made, and use, either itself or by anyone on its behalf, such subject matter in connection with any activity now or hereafter engaged in or permitted by the Authority. Promptly upon request by the Authority, the Consultant shall furnish or obtain from the appropriate person a form of license satisfactory to the Authority, but it is expressly understood and agreed that, as between the Authority and the Consultant, the license herein provided for shall nevertheless arise for the benefit of the Authority immediately upon the production of said subject matter, and shall not await formal exemplification in a written license agreement as provided for above. Such license agreement may be transferred by the Authority to its successors, immediate or otherwise, in the operation or ownership of any real or personal property now or hereafter owned or operated by the Authority, but such license shall not be otherwise transferable.

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

hold harmless the Authority against any claims of proprietary rights infringement arising out of such use of your work product.

23. You shall promptly and fully inform the Chief Engineer in writing of any patents, patent disputes, or intellectual property disputes, whether existing or potential, of which you have knowledge, relating to any idea, design, method, material, equipment or other matter related to the subject matter of this Agreement or coming to your attention in connection with this Agreement.

24. This Agreement is based upon your special qualifications for the services herein contemplated, and any assignment, subletting or other transfer of this Agreement or any part hereof or of any moneys due or to become due hereunder without the express consent in writing of the Authority shall be void and of no effect as to the Authority, provided, however, that you may sublet services to subconsultants with the express consent in writing of the Chief Engineer. All persons to whom you sublet services, however, shall be deemed to be your agents and no subletting or approval thereof shall be deemed to release you from your obligations under this Agreement or to impose any obligation on the Authority to such subconsultant or give the subconsultant any rights against the Authority.

For each proposed subcontractor with a proposed contract value of \$100,000 or more, the Contractor shall ensure that the Background Qualification Questionnaire Package ("BQQP"), available at:

<http://www.panynj.gov/inspector-general/inspector-general-programs.html>, is completed.

25. DISADVANTAGED BUSINESS ENTERPRISE (DBE)

For Task Orders identified as subject to the United States Department of Transportation regulations on Disadvantaged Business Enterprises (DBEs) contained in Part 26 of Title 49 of the Code of Federal Regulations: the requirements for the DBE Program are located in Attachment D: Disadvantaged Business Enterprise (DBE) Program of this Solicitation. The following goal for DBE participation has been set for this Contract:

25 % for firms owned and controlled by socially and economically disadvantaged individuals and certified as DBE's, as approved by the Authority.

26A. NON-DISCRIMINATION REQUIREMENTS

The Consultant shall take all necessary and reasonable steps to ensure non-discrimination in the performance and administration of all aspects of this Agreement.

A. Consultant hereby agrees that no person on the ground of race, color, national origin, creed/religion, sex, age or handicap/disability shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the furnishing of goods or services or in the selection and retention of subconsultants and/or vendors under this Agreement. Consultant shall also ascertain and comply with all applicable federal, state and local laws, ordinances, rules, regulations, and orders that pertain to equal employment opportunity, affirmative action, and non-discrimination in employment.

B. Consultant agrees that these “Non-Discrimination Requirements” are a binding part of this Agreement. Without limiting the generality of any other term or provision of this Agreement, in the event the Authority, or a state or federal agency finds that the Consultant or any of its subconsultants or vendors has not complied with these “Non-Discrimination Requirements”, the Authority may cancel, terminate or suspend this Agreement in accordance with Section 16 of this Agreement.

C. Consultant agrees to cooperate fully with the Authority’s investigation of allegations of discrimination. Cooperation includes, but is not limited to, allowing the Authority to question employees during the investigation of allegations of discrimination, and complying with directives that the Authority or the State or Federal government deem essential to ensure compliance with these “Non-Discrimination Requirements.”

26. NOTIFICATION OF SECURITY REQUIREMENTS

The Authority has the responsibility of ensuring safe, reliable and secure transportation facilities, systems and projects to maintain the well-being and economic competitiveness of the region. Therefore, the Authority reserves the right to deny access to certain documents, sensitive security sites and facilities (including rental spaces) to any person who declines to abide by Authority security procedures and protocols, any person with a criminal record with respect to certain crimes or who may otherwise pose a threat to the construction site or facility security. The Authority reserves the right to impose multiple layers of security requirements on the Consultant, its staff and subconsultants and their staffs, depending upon the level of security required, or make any amendments with respect to such requirements as determined by the Authority.

These security requirements may include but are not limited to the following:

- Execution of Non-Disclosure and Confidentiality Agreements and Acknowledgments

At the direction of the Authority, the Consultant shall be required to have its principals, staff and/or subconsultant(s) and their staff, execute Authority approved non-disclosure and confidentiality agreements.

- Consultant/subconsultant identity checks and background screening

The Authority’s designated background screening provider may require inspection of not less than two forms of valid/current government issued identification (at least one having an official photograph) to verify staff’s name and residence; screening of federal, state, and/or local criminal justice agency information databases and files; screening of any terrorist identification files; and access identification, to include some form of biometric security methodology, such as fingerprint, facial or iris scanning.

The Consultant may be required to have its staff, and any subconsultant’s staff, material-men, visitors or others over whom the Consultant/subconsultant has control, authorize the Authority or its designee to perform background checks, and a personal identity verification check. Such authorization shall be in a form acceptable to the Authority. The Consultant and subconsultants may also be required to use an organization designated by the Authority to perform the background checks.

In accordance with the Authority's Information Security Handbook, background screening is required when a person has an established need to know or has access to any one of the following types of information or physical locations:

- 1) Confidential Privileged Information
- 2) Confidential Information related to a security project and/or task
- 3) Secure Area of an Authority or PATH facility
- 4) Mission critical system

The Consultant shall perform background checks through the Authority's personnel assurance program provider. The Secure Worker Access Consortium (S.W.A.C.) is the only Authority approved provider to be used to conduct background screening and personal identity verification, except as otherwise required by federal law and/or regulation (such as Security Identification Display Area (SIDA), the federal regulatory requirements for personnel performing work at aviation facilities.). Information about S.W.A.C., instructions, corporate enrollment, online applications, and location of processing centers can be found at <http://www.secureworker.com>, or S.W.A.C. may be contacted directly at (877) 522-7922 for more information and the latest pricing. The cost for said background checks for staff that pass and are granted a credential may be reimbursable to the Consultant (and its subconsultants) as an out-of-pocket expense as provided herein. Costs for background checks for staff that are rejected for a credential for any reason are not reimbursable.

- Issuance of Photo Identification Credential

No person shall be permitted on or about the Authority construction sites or facilities (including rental spaces) without a facility-specific photo identification credential approved by the Authority. If the Authority requires facility-specific identification credentials for the Consultant and the subconsultant's staff, the Authority will supply such identification at no cost to the Consultant or its subconsultants. Such facility-specific identification credential shall remain the property of the Authority and shall be returned to the Authority at the completion or upon request prior to completion of the individual's assignment at the specific facility. It is the responsibility of the appropriate Consultant or subconsultant to immediately report to the Authority the loss of any staff member's individual facility-specific identification credential. The Consultant or subconsultant will be billed for the cost of the replacement identification credential. Consultant's and subconsultant's staff shall display Identification badges in a conspicuous and clearly visible manner, when entering, working at or leaving an Authority construction site or facility.

Employees may be required to produce not less than two forms of valid/current government issued identification having an official photograph and an original un laminated social security card for identity and SSN verification.

Where applicable, for sensitive security construction sites or facilities, successful completion of the application, screening and identity verification for all employees of the Consultant and subconsultant shall be completed prior to being provided a Photo Identification credential by the personnel assurance program provider.

If any questions should arise as to when a Personnel Assurance Program background check is required, the Port Authority Manager or contract administrator should be contacted for assistance.

- Designated Secure Areas

Services under the Agreement may be required in designated secure areas, as the same may be designated by the Authority ("Secure Areas"). The Authority will require the observance of certain security procedures with respect to Secure Areas, which may include the escort to, at, and/or from said high security areas by security personnel. All personnel that require access to designated Secure Areas who are not under escort by an authorized individual will be required to undergo background screening and personal identity verification.

Forty-eight (48) hours prior to the proposed performance of any work in a Secure Area, the Consultant shall notify the Project Manager. The Consultant shall conform to procedures as may be established by the Project Manager from time to time and at any time for access to Secure Areas and the escorting of personnel hereunder. Prior to the start of any work, the Consultant shall request a description from the Project Manager of the Secure Areas that will be in effect on the commencement date(s) of the request services. The description of Secure Areas may be changed from time to time and at any time by the Project Manager during the term of the Agreement.

- Access control, inspection, and monitoring by security guards

The Authority may provide for Authority construction site or facility (including rental spaces) access control, inspection and monitoring by Port Authority Police or Authority retained contractor security guards. However, this provision shall not relieve the Consultant of its responsibility to secure its equipment and work and that of its subconsultant/subcontractor's and service suppliers at the Authority sites or facilities (including rental spaces). In addition, the Consultant, subconsultant, subcontractor or service provider is not permitted to take photographs, digital images, electronic copying and/or electronic transmission or video recordings or to make sketches on any other medium at any Authority sites or facilities (including any rental spaces), except when necessary to perform the work under this Agreement, without prior written permission from the Authority. Upon request, any photograph, digital image, video recording or sketch made of any Authority sites or facility shall be submitted to the Authority to determine compliance with this Section, which submission shall be conclusive and binding on the submitting entity.

- Compliance with the Port Authority Information Security Handbook

- This Agreement may require access to Authority information considered Protected Information ("PI") as defined in the Port Authority Information Security Handbook ("Handbook"), dated October 15, 2008, revised as of April 2, 2018, and as may be further amended. The Handbook and its requirements are hereby incorporated into this Agreement and will govern the possession, distribution and use of PI if at any point during the lifecycle of the project or solicitation it becomes necessary for the Consultant to have access to PI. Protecting sensitive information requires the application of uniform safeguarding measures to prevent unauthorized disclosure and to control any authorized disclosure of this information within the Authority or when released by the Authority to outside entities. The Handbook can be obtained at:

<http://www.panynj.gov/business-opportunities/pdf/Corporate-Information-Security-Handbook.pdf>.

- Audits for Compliance with Security Requirements

The Authority may conduct random or scheduled examinations of business practices under this Section entitled “NOTIFICATION OF SECURITY REQUIREMENTS” and the Handbook in order to assess the extent of compliance with security requirements, PI procedures, protocols and practices, which may include, but not be limited to, verification of background check status, confirmation of completion of specified training, and/or a site visit to view material storage locations and protocols.

27. CONFIDENTIAL INFORMATION/NON-PUBLICATION

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

B. Protected Information shall mean and include collectively, as per *The Port Authority of New York & New Jersey Information Security Handbook (October 15, 2008, revised as of April 2, 2018, as may be further amended)*, Confidential Information, Confidential Proprietary Information, Confidential Privileged Information and information that is labeled, marked or otherwise identified by or on behalf of the Authority so as to reasonably connote that such information is confidential, privileged, sensitive or proprietary in nature. Confidential Information shall also include all work product that contains or is derived from any of the foregoing, whether in whole or in part, regardless of whether prepared by the Authority or a third-party or when the Authority receives such information from others and agrees to treat such information as Confidential.

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

idea, design, method, material, equipment or other matter related to this Agreement or coming to the Consultant's attention in connection with this Agreement.

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

The Consultant assumes the following distinct and several risks to the extent they may arise from the negligent or willful intentional acts or omissions of the Consultant or its subconsultants/subcontractors in the performance of services hereunder:

A. The risk of loss or damage to Authority property arising out of or in connection with the performance of services hereunder;

B. The risk or loss or damage to any property of the Consultant or its subconsultants/subcontractors arising out of or in connection with the performance of services hereunder;

C. The risk of claims, arising out of or in connection with the performance of services hereunder, whether made against the Consultant or its subconsultants/subcontractors or against the Authority, for loss or damage to any property of the Consultant's agents, employees, subcontractors, subconsultants, materialmen or others performing services hereunder;

D. The risk of claims, just or unjust, by third persons made against the Consultant or its subconsultants/subcontractors or against the Authority on account of injuries (including wrongful death), loss or damage of any kind whatsoever arising in connection with the performance of services hereunder, including claims against the Consultant or its subconsultants/subcontractors or against the Authority for the payment of workers' compensation, whether such claims are made and whether such injuries, damage or loss are sustained at any time both before and after the completion of services hereunder.

The Consultant shall indemnify the Authority against all claims described in subparagraphs A through D above and for all expense incurred by the Authority in the defense, settlement or satisfaction thereof, including expenses of attorneys. If so directed by the Authority, the Consultant shall defend against any claim described in subparagraphs B, C and D above, in which event the Consultant shall not without obtaining express advance permission from the General Counsel of the Authority raise any defense involving in any way the jurisdiction of the tribunal, immunity of the Authority, governmental nature of the Authority or the provisions of any statutes respecting suits against the Authority, such defense to be at the Consultant's cost.

The provisions of this clause shall also be for the benefit of the Commissioners, officers, agents and employees of the Authority, so that they shall have all the rights which they would have under this clause if they were named at each place above at which the Authority is named, including a direct right of action against the Consultant to enforce the foregoing indemnity, except, however, that the Authority may, at any time in its sole discretion and without liability on its part, cancel the

benefit conferred on any of them by this clause, whether or not the occasion for invoking such benefit has already arisen at the time of such cancellation.

Neither the completion of services hereunder nor the making of payment (final or otherwise) shall release the Consultant from its obligations under this clause. Moreover, neither the enumeration in this clause or the enumeration elsewhere in this Agreement of particular risks assumed by the Consultant or of particular claims for which he is responsible shall be deemed (a) to limit the effect of the provisions of this clause or of any other clause of this Agreement relating to such risks or claims, (b) to imply that the Consultant assumes or is responsible for risks or claims only of the type enumerated in this clause or in any other clause of this Agreement, or (c) to limit the risks which the Consultant would assume or the claims for which he would be responsible in the absence of such enumerations.

No third party rights are created by the Agreement, except to the extent that the Agreement specifically provides otherwise by use of the words "benefit" or "direct right of action".

Inasmuch as the Authority has agreed to indemnify the Cities of New York and Newark against claims of the types described in subparagraph D above made against said cities, the Consultant's obligation under subparagraph D above shall include claims by said cities against the Authority for such indemnification.

30. Pursuant to the Code of Ethics for Port Authority Vendors ("Code"), Consultants must execute a Compliance Certification, and provide it to the Authority, prior to beginning work under this Agreement. This Compliance Certification, once executed, is a material and integral part of the Agreement. A copy of the Compliance Certification must be retained by the Consultant, unless and until the Authority indicates that the Certifications may be disposed of. Violations of the law or of the Code may subject a Vendor or a Vendor's Employees to civil or criminal penalties. In addition, in the case of violation of any provision of the law or the Code, the Authority may pursue any available remedy, including, but not limited to, determining that a Vendor is in material breach of its contract and/or that, in the future, the Authority will have no further commercial dealings with the Vendor. The Code and the Compliance Certification (PA Form 4254) can be found at <https://www.panynj.gov/business-opportunities/become-vendor.html>.

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

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

- A. been indicted or convicted in any jurisdiction;
- B. been suspended, debarred, found not responsible or otherwise disqualified from entering into any agreement with any governmental agency or been denied a government contract for failure to meet standards related to the integrity of the Consultant;
- C. received a less than satisfactory rating on a public or government contract;
- D. had an agreement terminated by any governmental agency for breach of contract or for any cause based in whole or in part on an indictment or conviction;

E. ever used a name, trade name or abbreviated name, or an Employer Identification Number different from those inserted in the Proposal;

F. had any business or professional license suspended or revoked or, within the five years prior to proposal opening, had any sanction imposed in excess of fifty thousand dollars (\$50,000) as a result of any judicial or administrative proceeding with respect to any license held or with respect to any violation of a federal, state or local environmental law, rule or regulation;

G. had any sanction imposed as a result of a judicial or administrative proceeding related to fraud, extortion, bribery, bid rigging, proposal rigging, embezzlement, misrepresentation or anti-trust, regardless of the dollar amount of the sanctions or the date of their imposition; and

H. been, and is not currently, the subject of a criminal investigation by any federal, state or local prosecuting or investigative agency and/or a civil anti-trust investigation by any federal, state or local prosecuting or investigative agency, including an inspector general of a governmental agency or public authority.

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

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

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

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

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

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

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

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

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

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

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

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

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

In any case where the Consultant cannot make the certifications in this Section and the Section entitled “Certification of No Investigation (Criminal or Civil Anti-trust), Indictment, Conviction, Debarment Suspension, Disqualification and Disclosure of Other Information”, the Consultant shall so state and shall furnish with the signed proposal a signed statement which sets forth in detail the reasons therefor. If the Consultant is uncertain as to whether it can make the foregoing certifications, it shall so indicate in a signed statement furnished with its proposal, setting forth in such statement the reasons for its uncertainty. With respect to the foregoing certification in Section “32G.”, if the Consultant cannot make the certification, it shall provide, in writing, with the signed proposal: (i) a list of the name(s), address(es), telephone number(s), and place(s) of principal employment of each such individual or organization; and (ii) a statement as to whether such individual or organization has a “financial interest” in this Agreement, as described in the Procurement Disclosure Policy of the Authority (a copy of which is available upon request to the Chief Procurement Officer of the Authority). Such disclosure is to be updated, as necessary. As a result of such disclosure, the Authority shall take appropriate action up to and including a finding of non-responsibility.

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

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

Under certain circumstances, the Consultant may be required as a condition of award of this Agreement to enter into a Monitoring Agreement under which it will be required to take certain specified actions, including compensating an independent Monitor to be selected by the Authority, said Monitor to be charged with, among other things, auditing the actions of the Consultant to determine whether its business practices and relationships indicate a level of integrity sufficient to permit it to continue business with the Authority.

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

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

The policy permits a Consultant whose ineligibility has been so determined by an agency of the State of New York or of the State of New Jersey to submit a proposal on an Authority agreement and then to establish that it is eligible to be awarded an agreement on which it has proposed because

(i) the state agency determination relied upon does not apply to the Consultant, or (ii) the state agency determination relied upon was made without affording the Consultant the notice and hearing to which the Consultant was entitled by the requirements of due process of law, or (iii) the state agency determination was clearly erroneous or (iv) the state agency determination relied upon was not based on a finding of conduct demonstrating a lack of integrity or violation of a prevailing rate of wage law.

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

34. CONSULTANT RESPONSIBILITY, SUSPENSION OF WORK AND TERMINATION

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

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

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

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

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

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

this Agreement or any other Authority agreement. Where used herein, the term “Port Authority” or “Authority” shall be deemed to include all subsidiaries of the Authority.

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

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

36. OBLIGATION TO REPORT

In the event that the Consultant becomes aware of the occurrence of any conduct that is prohibited by the Section entitled “No Gifts, Gratuities, Offers of Employment, Etc.”, or if the Consultant knows or should reasonably know that a principal, employee, or agent of the Consultant or of its subconsultants or subcontractors has committed a violation of federal, New York or New Jersey law addressing or governing anti-trust, public contracting, false claims, fraud, extortion, bribery, bid rigging, embezzlement, prevailing wage or minority, woman, small or disadvantaged business enterprises, it shall report such information to the Authority’s Office of Inspector General within three (3) business days of obtaining such knowledge. (See “<http://www.panynj.gov/inspector-general>” for information about how to report information to the Office of Inspector General). Failing to report such conduct may be grounds for finding of non-responsibility. The Consultant shall not take any Retaliatory Action against any of its employees for reporting such conduct.

In addition, during the term of this Agreement, the Consultant shall not make an offer of employment or use confidential information in a manner proscribed by the Code of Ethics and Financial Disclosure dated March 11, 2014, or as may be revised, (a copy of which is available upon request to the Office of the Secretary of the Authority).

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

37. CONFLICT OF INTEREST

During the term of this Agreement, the Consultant shall not participate in any way in the preparation, negotiation or award of any agreement (other than an agreement for its own services to the Authority) to which it is contemplated the Authority may become a party, or participate in any way in the review or resolution of a claim in connection with such an agreement if the Consultant has a substantial financial interest in the consultant or potential consultant of the Authority or if the Consultant has an arrangement for future employment or for another business relationship with said Consultant or potential consultant; nor shall the Consultant at any time take any other action which might be viewed as or give the appearance of conflict of interest on its part. If the possibility of such an arrangement for future employment or for another business arrangement has been or is the subject of a previous or current discussion, or if the Consultant has reason to believe such an arrangement may be the subject of future discussion, or if the Consultant has any financial interest, substantial or not, in a consultant or potential consultant of the Authority, and if the Consultant’s participation in the preparation, negotiation or award of any agreement with such a consultant or the review or resolution of a claim in connection with such an agreement is contemplated or if the Consultant has reason to believe that any other situation exists which might

be viewed as or give the appearance of a conflict of interest, the Consultant shall immediately inform the Chief Procurement Officer in writing of such situation, giving the full details thereof. Unless the Consultant receives the specific written approval of the Chief Procurement Officer, the Consultant shall not take the contemplated action which might be viewed as or give the appearance of a conflict of interest. The Chief Procurement Officer may require the Consultant to submit a mitigation plan addressing and mitigating any disclosed or undisclosed conflict, which is subject to the approval of the Chief Procurement Officer and shall become a requirement, as though fully set forth in this Agreement. In the event the Chief Procurement Officer shall determine that the performance by the Consultant of a portion of its services under this Agreement is precluded by the provisions of this numbered Section, or a portion of the Consultant's said services is determined by the Chief Procurement Officer to be no longer appropriate because of such preclusion, then the Chief Procurement Officer shall have full authority on behalf of both parties to order that such portion of the Consultant's services not be performed by the Consultant, reserving the right, however, to have the services performed by others; and any lump sum compensation payable hereunder which is applicable to the deleted work shall be equitably adjusted by the parties. The Consultant's execution of this document shall constitute a representation by the Consultant that at the time of such execution the Consultant knows of no circumstances, present or anticipated, which come within the provisions of this Section or which might otherwise be viewed as or give the appearance of a conflict of interest on the Consultant's part. The Consultant acknowledges that the Authority may preclude it from involvement in certain disposition/privatization initiatives or transactions that result from the findings of its evaluations hereunder or from participation in any agreements that result, directly or indirectly, from the services provided by the Consultant hereunder. The Authority's determination regarding any questions of conflict of interest shall be final.

38. INTEGRITY MONITOR

In the event that the Authority hires an Integrity Monitor in connection with work under this Agreement, the Consultant and any subconsultants/subcontractors shall cooperate fully with the Integrity Monitor and the Authority, which includes, but is not limited to, providing complete access to all personnel and records in any way related to the work performed pursuant to this Agreement. Any failure to cooperate may result in the termination of this Agreement. The Consultant shall include the provisions of this clause in each subcontract entered into under this Agreement.

39. RIGHT TO AUDIT

Notwithstanding anything to the contrary, the Authority, including its Inspector General, Audit Department and Integrity Monitor, or its designee(s) each shall have the right to audit all of the records of the Consultant with respect to the work and the Agreement, including, without limitation, records pertaining to any compensation paid, payable, or to be paid under the Agreement. The Consultant shall not be entitled to any reimbursement or other compensation for costs associated with such audit, investigation, or certification. The Consultant shall include the provisions of this clause in each subcontract entered into under this Agreement.

The Consultant agrees to pay for the cost of any audit or investigation conducted by the Authority, in which any criminal activity, ethics violations, or professional misconduct by the Consultant or any of its employees, or subcontractors or any of its employees, are discovered. The Consultant

shall further agree that should it fail or refuse to pay for any such audit or investigation, the Authority is authorized to deduct from any sum owing the Consultant an amount equal to the cost of such audit and the damages resulting therefrom. The determination of the value of any such costs and decision to withhold any such payments are at the sole discretion of the Authority (including its Inspector General).

40. DEFINITIONS

As used in Sections 26 through 39 above, the following terms shall mean:

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

Agency or Governmental Agency - Any federal, state, city or other local agency, including departments, offices, public authorities and corporations, boards of education and higher education, public development corporations, local development corporations, the Port Authority of New York and New Jersey and its wholly owned subsidiaries and others.

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

Officer - Any individual who serves as Chief Executive Officer, Chief Financial Officer, or Chief Operating Officer of the Consultant by whatever titles known.

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

Retaliatory Action - Any adverse action taken by, or at the direction of, the Consultant, against any of its employees for reporting any information as set forth in the clause entitled "Obligation to Report," above.

41. The entire Agreement between the parties is contained herein (including all Attachments and Exhibits, as set forth in Section 44 below) and no change in or modification, termination or discharge of this Agreement in any form whatsoever shall be valid or enforceable unless it is in writing and signed by the party to be charged therewith, or by his duly authorized representative, provided, however, that termination in the manner hereinbefore expressly provided shall be effective as so provided.

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

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

44. List of Attachment/Exhibits

The following list of exhibits and attachments are annexed hereto and incorporated herein:

Attachment A: Scope of Work
Attachment B: Agreement on Terms of Discussion
Attachment C: Company Profile
Attachment D: Disadvantaged Business Enterprise (DBE) Plan
Attachment E: Staffing Plan
Attachment F: Insurance Requirements
Exhibit I: Federal Aviation Administration (FAA) Contract Provisions

45. Notices. All notices, approvals and consents required or desired to be given under this Agreement shall be in writing, and shall be (i) personally delivered or (ii) transmitted by certified mail, postage prepaid, return receipt requested. Notices shall be addressed and delivered as follows:

With a copy to:

The Port Authority of New York and New Jersey
Attention: Chief Engineer
4 World Trade Center
150 Greenwich Street, 19th Floor
New York, New York 10007

and

With a copy to:

The Port Authority of New York and New Jersey
Attention: General Counsel
4 World Trade Center, 23rd Floor
150 Greenwich Street
New York, New York 10007

To Consultant:

Insert Consultant Name

Attn:

Title:

Address:

46. Nothing in this Agreement is intended to constitute the creation of an agency relationship between the Authority and the Consultant or any other right for the Consultant to act as the representative of the Authority for any purpose whatsoever except as may be specifically provided

in this Agreement. It is hereby specifically acknowledged and understood that the Consultant, in performing its services hereunder, is and shall be at all times an independent contractor and the officers, agents and employees of the Consultant shall not be or be deemed to be agents, servants, or employees or "special employees" of the Authority.

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

Sincerely,

THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY

Lillian D. Valenti
Chief Procurement Officer
Procurement Department

Date _____

The execution of this Agreement by the Consultant's duly authorized representative shall serve as a certification that no alterations have been made to this Agreement, and if any changes or alterations to this Agreement have been made by the Consultant without the Authority's prior written consent, such changes shall be void, non-binding and of no effect.

ACCEPTED:
FIRM NAME

By: _____

Title: _____

Date: _____