

November 30, 2009

**SUBJECT: REQUEST FOR PROPOSALS FOR THE PERFORMANCE OF EXPERT
PROFESSIONAL TRANSPORTATION PLANNING AND TRAFFIC
ENGINEERING SERVICES FOR THE WORLD TRADE CENTER
RECONSTRUCTION — RFP NO. 19855**

Dear Sir or Madam:

The Port Authority of New York and New Jersey (referred to herein as the “Authority” or “Port Authority”) is seeking Proposals in response to this Request for Proposals (RFP) for the performance of expert professional transportation planning and traffic engineering services for the World Trade Center reconstruction, for a four year term (48 months), with two one-year (12 month) extension options, at the exclusive option of the Port Authority. The scope of the services to be performed by the Consultant hereunder are set forth in Attachment A to the Authority’s standard agreement (“Standard Agreement”), attached hereto and made a part hereof. Please review the attached form of agreement that will be the basis for the submission of Proposals and which the Consultant will sign in the event the Authority accepts your Proposal.

The standard agreement contains the terms and conditions governing the resultant agreement of this RFP. The Proposer is expected to agree with all of the terms and conditions of the standard agreement. The Proposer should therefore not make any changes to the Standard 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. The Authority is under no obligation to entertain or accept any such specific exceptions. After the Proposal Due Date, the Proposer will be precluded from raising any exceptions to this RFP.

Upon completion of the RFP process, the Authority may elect to enter into an Agreement with one or more firms.

I. SUBMISSION OF PROPOSALS:

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

- A. The Proposal shall be no more than 100 pages (double-sided using 12 point or greater font size). Each resume shall be 2-page maximum, double-sided using 12 point or greater front size. The Proposal pages shall be numbered and bound, or in a 3-ring binder, with “Firm Name”, and **RFP Number 19855** clearly indicated on the cover.
- B. Each section of the Proposal shall be separated with a tab divider that is labeled in accordance with the letter of the requirements specified below.
- C. Address Proposal to: The Port Authority of New York and New Jersey, One Madison Avenue, 7th Floor, New York, NY 10010, **Attention: RFP Custodian. Do not address**

your Proposal to any other name. Submit one (1) reproducible original and five (5) copies, along with one (1) compact disc copy, of your Proposal for review. Notwithstanding submission of the compact disc, in case of conflict, the reproducible original of the Proposal and the written hard copy agreement, if awarded, shall take precedence over material on the compact disc.

- D. The Proposer should use its **full legal name without abbreviations** in its submission to the Authority, including on any return address label, in information on the compact disc and in the reproducible original and copies of the Proposal. It is the responsibility of the Proposer to properly label all submissions as mislabeling may lead to delays in Contract award and Contract payments.
- E. Provide the address of your firm to which any written correspondence should be sent, as well as a contact name with phone number and email address.
- F. Allow sufficient time for delivery of your sealed Proposal so that the Authority receives it **no later than 2:00 p.m. on December 22, 2009 ("Proposal Due Date")**. **The cover of your submittal must include the RFP Number (as stated above) and the RFP title.** The Authority assumes no responsibility for delays caused by any delivery services.
- G. The Authority will not accept Proposals submitted via electronic mail or fax.
- H. If your Proposal is to be delivered by messenger, please note that only individuals with valid photo identification will be permitted access to the Authority's offices. Messengers without valid identification shall be turned away and their packages not accepted.

II. PROPOSER PREREQUISITES:

Only Proposals from firms demonstrating previous experience in the performance of services similar to those contemplated herein shall be considered. The Authority will be the sole judge of whether a Proposer meets the prerequisite requirements.

Firms who can demonstrate that they comply with the following should submit Proposals, as only Proposals from such Firms will be considered:

- A. The Proposer must demonstrate to the satisfaction of the Port Authority that it has been in the business of traffic engineering and transportation planning for at least ten (10) years.
- B. The Proposer must demonstrate to the satisfaction of the Port Authority that it has the relevant experience and capability to manage a project of this type. The Proposer shall fulfill this requirement by having completed at least two (2) transportation planning and traffic engineering consultant agreements involving the identification of recommendations or approaches for maintaining or planning for efficient pedestrian and vehicular movements within the past five (5) years without any incidents or material issues.

In the event a Proposal is submitted by a joint venture the foregoing prerequisites will be considered with respect to such Proposal as follows:

With respect to subparagraphs (A) and (B) above, the prerequisite will be considered satisfied if any of its participants individually, can meet the requirements.

If the Proposal is submitted by a common law joint venture, a joint venture that has not been established as a distinct legal entity, each participant of the joint venture shall be held jointly and severally liable and must individually execute and perform all acts required by this Proposal. Documents signed by a common law joint venture, in connection with this Proposal, shall include the names of all participants of the joint venture followed by the words “acting jointly and severally”. All joint venture proposers must provide documentation of their legal status.

All Proposers must include documentation that they meet the above prerequisites. Attachment C-1 Proposer Prerequisites Item A and Attachment C-2 Proposer Prerequisites Item B should be completed and submitted as part of the Proposal to document the required experience. By furnishing this solicitation document to Proposers, the Port Authority has not made a determination that the Proposers have met the prerequisites or have otherwise been deemed qualified to perform the services. In addition, a determination that a Proposer has met the prerequisites is no assurance that they will be deemed qualified in connection with other Proposal requirements included herein.

III. FINANCIAL INFORMATION

The Proposer will be required to 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:

- A. (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 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.

- B. 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.

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.

IV. EVALUATION CRITERIA

Each Proposal will be evaluated by a Selection Committee composed of Port Authority personnel experienced in the disciplines necessary to make a value judgment and decision regarding the technical qualifications of a proposing firm and its oral presentation, if necessary.

The Selection Committee members will base their evaluation on selection criteria, which are listed below in relative order of importance, identifying which, if any are equally weighted.

- A. Firm Qualifications and Experience
- B. Qualifications and Experience of Proposed Staff
- C. Proposed Management Approach

Note: The first and second criteria are equally weighted.

Award will be made to the responsible firm whose Proposal is most advantageous to the Authority. In determining which Proposal is most advantageous, the Authority will evaluate Proposals to determine which Proposal offers the greatest business value to the Authority based upon an analysis of the qualitative technical factors and price/cost in order to derive which Proposal represents the "best value" to the Authority. In the event that two or more Proposals are considered by the Authority to be basically equal in their technical merit, the evaluated cost or price becomes more important; in such a case, cost or price may ultimately be the deciding factor. Accordingly, the Authority may not necessarily make an award to the Proposer with the highest technical ranking nor award to the Proposer with the lowest price proposal, if doing so would not be in the overall best interest of the Authority.

V. PROPOSAL SUBMISSION REQUIREMENTS:

To respond to this RFP, provide the following information:

In the front of your Proposal, a copy of Attachment B, "Agreement on Terms of Discussion," signed by an officer of your company. If the Proposer is a joint venture, an authorized representative of each party shall sign the Agreement.

- A. Firm Qualifications and Experience

Demonstrate your compliance with the proposer prerequisites listed above by providing Attachments C-1 and C-2.

In addition, provide a statement from a principal of your firm identifying your firm's specific relevant experience in the performance of services similar to those contemplated

herein. For all projects referenced, include the name of the company, the date the services were provided, the nature of the services performed, the name of a contact person and current telephone number for verification purposes.

Only Proposals received from firms demonstrating relevant prior experience shall be evaluated for performance of the subject services.

Provide a complete list of your firm's affiliates.

B. Qualifications and Experience of Proposed Staff

List the name(s), title(s) and provide the resumes of key personnel who will be assigned to perform any services requested. Indicate how you will assure commitment to the project of said key personnel and your plan for providing equally qualified personnel in the event that such key personnel become unavailable during the progress of the work. However, notwithstanding the aforementioned required plan, please note that it is expected that key personnel submitted under this Request for Proposal will be committed to being assigned to this project for its duration. The Consultant shall not remove or replace the Principal-In-Charge (Principal) or Project Manager or any other key personnel as identified by the Authority, without the written consent of the Authority and the Authority will not consent until the Consultant has proffered a candidate with similar and equal credentials acceptable to the Authority.

Identify subconsultants, if any, and indicate their experience and qualifications. Provide the terms and conditions for their compensation, their M/WBE status and the technical qualifications of their key personnel to be assigned to the subject project.

C. Management Approach

Submit a detailed description of the proposed management approach to be taken for the administration of work under the Contract. Factors addressed in your management approach shall include, but are not limited to the following: your proposed organizational structure to be responsive to the Authority's needs in compliance with FTA regulations as well as other stakeholders' needs; your proposed approach and schedule for keeping the client apprised of the project status; your proposed approach to ensuring the quality of the services to be provided; and proposed safety management plan. In support of the proposed Management Approach, the Proposer shall also provide a detailed Staffing Plan in accordance with the Attachment E– Staffing Plan.

D. Provide your M/WBE Participation Plan, in accordance with the M/WBE Subconsulting Provisions hereunder. Proposers are directed to use form PA3749B as the recording mechanism for the M/WBE Participation Plan, annexed hereto as Attachment This form may also be downloaded at:

<http://www.panynj.gov/business-opportunities/become-vendor.html>

The M/WBE Participation Plan (“Plan”) submitted by the Proposer to the Port Authority shall contain, at a minimum, the following:

- Identification of M/WBE’s: Provide the names and addresses of all M/WBEs included in the Plan. If none are identified, describe your plan and process for selecting participant firms in order to achieve the good faith goals under this Agreement.
- Level of Participation: Indicate the percentage of M/WBE participation expected to be achieved with the arrangement described in the Plan and in accordance with the requirements stated in the Standard Agreement.
- Scope of Work: Describe the specific scope of work each M/WBE firm will perform.
- Previous M/WBE Participation: Describe any previous or current M/WBE participation that the Proposer has utilized in the performance of its contracts.

All M/WBE subcontractors listed on the M/WBE Participation Plan must be certified by the Port Authority in order for the Proposer or Consultant to receive credit toward the M/WBE goals set forth in this Agreement. Port Authority M/WBE certified vendor information is available to all vendors who are registered with the Port Authority. Please log on to <https://panynjprocure.com/VenLogon.asp> to search for M/WBEs firms by a particular commodity or service and <http://www.panynj.gov/business-opportunities/mwsbe-search.cfm> for construction firms. The Port Authority makes no representation as to the financial responsibility of such firms or their ability to perform work under this Agreement.

Proposed M/WBE Participation Plans will be reviewed and approved by the Authority’s Office of Business and Job Opportunity (“OBJO”). Proposers may request a waiver of the M/WBE participation goals set forth in this Agreement by providing with its Proposal, information in accordance with this provision and Section 22 of the Standard Agreement.

The Director has set a combined goal of 17 percent participation by qualified and certified MBEs and WBEs on technical service projects.

If the Proposer/Consultant wishes to subcontract a portion of the work through a firm not listed in the Directory, but which the Consultant believes should be eligible for certification by the Authority because it is (1) an M/WBE, as defined above and in the Standard Agreement and (2) competent to perform portions of the work, the Proposer/Consultant shall submit an M/WBE Uniform Certification Application to the Port Authority of New York and New Jersey, Office of Business and Job Opportunity (“OBJO”), 233 Park Avenue South, 4th Floor, New York, NY 10003. The application is available online at <http://www.panynj.gov/business-opportunities/sd-become-certified.html>. In addition, to update a previously-certified firm’s certification file and to advise OBJO of changes to any information, please email these changes to OBJOCert@panynj.gov. Credit toward applicable goals will be granted only to Port

Authority certified vendors. For more information about M/WBE Programs, call (212) 435-7808.

E. PRICING AND COMPENSATION PROPOSAL

The Proposer shall submit a concise Pricing and Compensation Proposal (Attachment F) that provides the following information in accordance with the Scope of Services presented in Attachment A.

(i) The Pricing and Compensation Proposal must include the following for the initial period and Option Period(s), in accordance with Sections 7 and 8 of the Agreement:

1. The Consultant's Fixed Fee in accordance with Section 8.A of the Standard Agreement.
2. Direct Personnel Costs, in accordance with Section 8.B of the Standard Agreement - An hourly rate schedule itemized by name, for each job title, experience and estimated hours to perform the defined scope for each job title.
3. Overhead Rate, in accordance with Section 8.C of the Standard Agreement
4. Cost of Subconsultants, in accordance with Section 8.D of the Standard Agreement - An hourly rate schedule itemized by name, for each job title, experience and estimated hours to perform the defined scope for each job title.
5. Reimbursable expenses, in accordance with Section 8.E of the Standard Agreement
6. The Proposer should submit any backup material deemed appropriate for consideration of costs, and shall provide such material to the Authority, upon written request by the Authority and within the time set forth in such request. Failure by a Proposer to submit such material as requested may deem such Proposer as ineligible for award.

The Proposer shall also submit the Cost Detail and the Itemized Out of Pocket Expenses Worksheet with the Pricing and Compensation Proposal as part of Attachment F.

F. BACKGROUND QUALIFICATIONS QUESTIONNAIRE

The Proposer shall submit a completed Background Qualifications Questionnaire (BQQ), required for all consultants, subconsultants, contractors and vendors providing services at the World Trade Center Site. This document and instructions for submitting the completed BQQ to the Authority's Office of Inspector General can be obtained at the Authority's website through the following link:

http://www.panynj.gov/wtcprogress/pdf/PANYNJ_OIG_WTC_BQQP.zip

A BQQ is also to be submitted for any subcontractor, subconsultant or vendor known to the Proposer at the time of Proposal submission.

- G. If your firm is selected for performance of the subject services, the Agreement the Consultant will be asked to sign will include the Consultant's Integrity Provisions included as Sections 24 through 30 of the accompanying Standard Agreement. 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 the inability to make such certification(s). Such statement shall be submitted in a separate envelope along with your Proposal, clearly marked "CERTIFICATION STATEMENT".

H. GENERAL CONFLICT OF INTEREST

If the Proposer or any employee, agent or subconsultant of the Proposer may have a possible conflict of interest, 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 and submit a mitigation plan addressing said conflict.

In the opinion of the Authority, any Proposer performing construction management, general contracting, design, environmental and/or management services in any capacity for the Authority or other WTC stakeholders/owners responsible for building portions of the WTC site, such as the Lower Manhattan Development Corporation (LMDC), the New York State Department of Transportation (NYSDOT), WTC Net Lessee, has a potential conflict of interest. However, a Proposer who has a business relationship as indicated above, and believes that it can provide a mitigation plan that would address the conflict of interest shall submit such plan for evaluation to the Authority with its Proposal.

It is envisioned and recommended that the following items/concepts be addressed in a proposed mitigation plan where a conflict or the appearance of a conflict of interest may in the future, or does currently exist:

- 1) A proposed organizational chart/structure/firewall designed to keep staff and resources separate, as specific by project, and to allow for no overlap between team members and resources including, but not limited to: equipment, materials, staffing, laydown areas, and office facilities on said projects.
- 2) Specific plan(s) intended to maintain the separation and integrity, as specific by project, of the following to include, but not be limited to: confidential and/or privileged information, documents, plans, drawings, estimates and other financial data.
- 3) Specific plan to maintain proper and independent billing procedure(s) designed to address the avoidance of double and improper billings.

- 4) Specific plan to educate employees, on all levels, of the importance of said mitigation plan to promote the awareness and importance of mitigation and its roll in preventing fraud, waste, and abuse, and verification of such education/training and individual understanding.
- 5) Specific plan to internally oversee and/or audit the above-listed plans and procedures to ensure compliance.
- 6) Specific contingency plan, notification, and approval process for cases where there is a necessary, reasonable, and business related purpose for overlap in and/or sharing of staff members and/or resources.
- 7) Specific contingency plan addressing a direct or suspected violation of said mitigation plan. All violations must be reported to the Port Authority, including its Inspector General.
- 8) The Consultant shall ensure that any subconsultant/subcontractor must cooperate with the Port Authority's Inspector General and its Integrity Monitor, in auditing the mitigation plan for compliance. This cooperation must include access to all necessary documentation and interviews of employees.

The Authority reserves the right to disqualify the Proposer if, in its 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.

As used herein, "Integrity Monitor" shall mean a private firm hired to assist the Office of Inspector General in preventing and detecting fraud. There are two applications for an integrity monitor. First, an integrity monitor is assigned to prevent or detect fraud on a specific project - for example all Port Authority projects at the World Trade Center site have an integrity monitor. Second, the Port Authority has required contractors with integrity issues to retain at their own cost an Office of Inspector General-approved integrity monitor as a condition of being awarded contracts.

I. ORGANIZATIONAL CONFLICT OF INTEREST

1. This Agreement may give rise to a potential for an organizational conflict of interest. An organizational conflict of interest exists when the nature of the work to be performed under the Agreement may, without some form of restriction on future activities, result in an unfair competitive advantage to the Consultant.
 - a. The Consultant shall have access to confidential and/or sensitive Authority information in the course of Agreement performance. Additionally, the Consultant may be provided access to proprietary information obtained from other contracted entities during Agreement performance. The Consultant agrees to protect all such information from disclosure even after contract expiration or termination unless so authorized, in writing, by the Authority and to refrain from using such information for any purpose other than that for which it was furnished.

- b. To the extent that the Consultant either (i) uses confidential and/or sensitive Authority information or proprietary information obtained from other Authority contractors to develop any form of document, report, or plan that is determined by the Authority to be the basis, in whole or in part, of any subsequent solicitation issued by the Authority or (ii) develops written specifications that are used in any subsequent solicitation issued by the Authority, the Consultant agrees that it shall not be eligible to compete for such subsequent solicitation(s) as a prime or principal contractor or as part of any teaming arrangement unless the Authority provides, in writing, a specific waiver of this restriction. The duration of any restriction imposed under this subparagraph shall not exceed the length of the initial performance period of any subsequently awarded contract for which the Consultant was ineligible to complete.
- 2. The Consultant, by submitting its Proposal, agrees to the above stated conditions and terms and further agrees to perform all duties under the Contract and, in doing so, agrees not to enter into contractual agreements with Authority prime contractors and first-tier subcontractors in such a way as to create an organizational conflict of interest.
- 3. If the Authority determines that the Consultant has violated any term of this clause entitled “Organizational Conflict of Interest”, the Authority may take any appropriate action available under the law or regulations to obtain redress including, but not limited to, requiring the Consultant to terminate any affiliation or contractual arrangement with an Authority prime contractor or first-tier subcontractor at no cost to the Authority, determining the Consultant ineligible to compete for or be awarded any subsequent or “follow-on” contracts that may be based upon the Consultant’s actions under this Agreement or violations of this numbered clause, or terminating this Agreement, in whole or in part.

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 60 minutes, and should include the material contained in your Proposal. The presentation will be followed by an approximately 30-minute question and answer session. Proposer's staff providing the presentation shall be led by the proposed Project Manager, who may be supported by no more than five (5) other senior staff members who are proposed to work on this project. Notification of presentation scheduling is made by email. 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. ADDITIONAL INFORMATION:

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

Your attention is also directed to Section 24 of the Authority's Standard Agreement regarding nondisclosure/confidentiality agreements

Your attention is also directed to Section 22 of the Authority's Standard Agreement in which the Director has stated the goals for Minority-owned and Women-owned Business Enterprise participation. All M/WBE subconsultants utilized in the performance of services hereunder must be certified by the Authority as outlined in Part V Paragraph D. above in order for the Consultant to receive credit.

After a review of all Proposals received, the Authority will forward two copies of the Standard Agreement and Attachment A thereto to the selected firm(s) who shall sign and return both copies. The return of one copy executed by the Authority will effectuate the Agreement.

Should you have any questions, please e-mail them to Marios Socrates at msocrates@panynj.gov. **All such emails must have "RFP Number 19855" in the subject line.** All questions should be submitted no later than 4:00 P.M. (EST) on December 11, 2009. Neither Mr. Socrates 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 its requirements. If interpretation or additional information is required, it will be communicated by written addendum issued by the Authority and such writing shall form a part of this RFP, or the accompanying documents, as appropriate. Proposers should

not rely on any representations, statements, or clarifications not made in writing in this RFP or in a formal addendum.

VIII. CITY PAYROLL TAX

Proposers should be aware of the payroll tax imposed by the:

- a. City of Newark, New Jersey for services performed in Newark, New Jersey;
- b. City of New York, New York for services performed in New York, New York; and
- c. City of Yonkers, New York for services performed in Yonkers, New York.

These taxes, if applicable, are the sole responsibility of the Consultant. Proposers should consult their tax advisors as to the effect, if any, of these taxes. The Port Authority provides this notice for informational purposes only and is not responsible for either the imposition or administration of such taxes. The Port Authority exemption set forth in the Paragraph entitled "Sales Tax Exemption", in Section IX below and in the "Standard Contract Terms and Conditions" included herein as Attachment B Part II, does not apply to these taxes.

IX. SALES TAX EXEMPTION

Purchases of services and tangible personal property by the Port Authority are exempt from New York and New Jersey state and local sales and compensating use taxes. (Sales Taxes). Therefore, the Port Authority's purchase of the Consultant's services under this Contract is exempt from Sales Taxes. Accordingly, the Consultant must not include Sales Taxes in the price charged to the Port Authority for the consultant's services under this Contract.

X. DISPOSAL OF CONTRACT DOCUMENTS

The Proposers shall ensure that all recipients of Contract documents through them, including those who do not propose, and any prospective subcontractors and suppliers who may receive all or a part of the Contract documents or copies thereof, must secure and appropriately dispose of the Contract documents to prevent further disclosure of the information contained in the documents. Secure and appropriate disposal includes methods of document destruction such as cross shredding or arrangements with refuse handlers which ensure that third persons will not have access to the documents' contents before, during, or after disposal. Documents may also be returned for disposal purposes to the Contract Desk on the 3rd Floor, 3 Gateway Center, Newark NJ 07102 or the office of the Director of Procurement, One Madison Avenue, 7th Floor, New York NY 10010

XI. PROTEST PROCEDURES

The information found at the following link is the sole administrative remedy for protesting procurement decisions:

http://www.panynj.gov/DoingBusinessWith/contractors/pdfs/Protest_Procedures.pdf

The Authority reserves the unqualified right, in its sole and absolute discretion, to reject all Proposals, to waive defects in Proposals, to undertake discussions and modifications with one or

more Proposers/Consultants 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.

You shall be entitled to no compensation in connection with your preparation, submission or presentation of a Proposal. The Port Authority shall have no obligation to you except under a duly authorized and executed Agreement/Contract entered into by the Authority and the chosen Consultant.

Sincerely yours,

Patricia Cose
Procurement Manager
WTC Site Projects
Procurement Department

Attachments:

- Port Authority Standard Agreement
- Attachment A – Scope of Services
- Attachment B – Agreement on Terms of Discussion
- Attachment C-1 – Proposer Prerequisite A
- Attachment C-2 – Proposer Prerequisite B
- Attachment D – M/WBE Participation Plan
- Attachment E – Staffing Plan (also provided as separate Excel file)
- Attachment F – Pricing and Compensation Proposal (also provided as separate Excel file)
- Exhibit A – FTA Requirements
- Exhibit B – Insurance Requirements

P.A. Agreement #
DATE

FIRM NAME
ADDRESS
CITY, STATE ZIP

Attention: CONTACT NAME, TITLE

**SUBJECT: PERFORMANCE OF EXPERT PROFESSIONAL TRANSPORTATION
PLANNING AND TRAFFIC ENGINEERING SERVICES FOR THE
WORLD TRADE CENTER RECONSTRUCTION**

Dear CONTACT:

1. The Port Authority of New York and New Jersey (hereinafter referred to as the "Authority" or "Port Authority") hereby offers to retain <FIRM NAME> (hereinafter referred to as "the Consultant" or "you") to provide expert professional transportation planning and traffic engineering services for the World Trade Center reconstruction ("Services" or the "Project") as more fully set forth in Attachment A, which is attached hereto and made a part hereof.

For the purpose of administering this Agreement, the Director has designated ****, <TITLE>, or other such individual as hereinafter designated, to act as his 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 Director of Procurement.

As used herein:

"Agreement" shall mean the writings setting forth the Scope of Services, terms and conditions for the procurement of Services, as defined hereunder and shall include, but not be limited to the Request for Proposals (RFP), Attachment A, Attachment B, Attachment F, Pricing and Compensation Proposal, Proposal/Sheet, FTA Provisions of Exhibit A, Exhibit B; and, if included, any other attachments, endorsements, schedules, exhibits, or drawings, the Authority's acceptance and any written addenda issued over the name of the Authority's Manager, Procurement Department.

"Chief Engineer" shall mean the Chief Engineer of the Authority, acting either personally or through his duly authorized representatives acting within the scope of the particular authority vested in him unless specifically stated to mean acting personally.

"Director" shall mean the Authority's Director of World Trade Center Construction that operates the facility of the Port Authority at which the services hereunder are to be performed, for the time being, or his/her successor in duties for the purpose of this Contract, acting personally or through one of his/her authorized representatives for the purpose of this Contract.

“Manager” shall mean the WTC Site Logistics Project Manager or his successor in duties for the purpose of this Contract, acting personally or through his duly authorized representative for the purpose of this Contract.

3. The term of this Agreement is a four (4) year period commencing on _____ (“Effective Date”). The Authority reserves the right to extend this Agreement for two (2) additional one (1)-year periods (“Option Periods”). Notification of exercise of said extension shall be by letter from the Director of Procurement at least thirty (30) days prior to the end of the base term.

Your services shall be performed as expeditiously as possible and at the time or times required by the Director. Time is of the essence in the performance of all your services under this Agreement.

4. 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 Director personally, in which case the requirements of said notification shall apply.

This Agreement is subject to the insurance requirements set forth in Exhibit B, Insurance Requirements.

This Agreement is to be funded in whole or in part by the Federal Transit Administration (FTA) pursuant to the current version of the United States of America Dept of Transportation Federal Transit Administration Master Agreement for Lower Manhattan Recovery Grants. As a result, Consultant (and its subconsultant(s)) agrees to comply with the applicable FTA provisions set forth in Exhibit A of this Agreement.

5. The Consultant shall meet and consult with Authority staff as requested by the Director 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 Director. The Director 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 Director, but the Consultant shall 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 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 therein which are best

suited for the contemplated construction, done in accordance with sound engineering principles and signed and sealed by a licensed Professional Engineer.

6. 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 Director 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.

7. You shall not continue to render services under this Agreement after the point at which the total amount to be paid to you hereunder, in accordance with Paragraph 8 below, including reimbursable expenses reaches the amount of \$_____ unless you are specifically authorized in writing to so continue by the Director. If no such authorization is issued, this Agreement shall be terminated without further obligation by either of the parties as to services not yet performed, but you shall be compensated as hereinafter provided for services already completed. It is understood, however, that this limitation shall not be construed to entitle you to the above amount as a minimum compensation.

8. As full compensation for all of your services and obligations in connection with this Agreement, the Authority will pay you the total of the amounts computed as set forth below, subject to the limits on compensation and provisions set forth in paragraph 7 above. Subject to the terms and conditions below, travel time is not reimbursable unless approved in advance and in writing by the Authority.

A. Consultant's Fixed Fee. For Consultant's satisfactory performance of its Services and all of its obligations in connection with this Agreement, the Port Authority shall pay, subject to pro-rata portion thereof due to any suspension or termination of this Agreement as permitted herein, the Consultant a fixed fee in the amount of \$_____ ("Consultant's Fixed Fee" or "Fee") representing Consultant's profit on the base Agreement, and during each option period, if so exercised by the Authority, the Consultant's Fixed Fee shall be \$_____. In no event shall a Change Order for additional services that are within the general scope of this Agreement, result in an increase in the Consultant's Fixed Fee.

B. Direct Personnel Costs. Consultant shall be reimbursed for the actual hourly rates of Consultant's full-time employees ("Personnel") for Services on the Project. Attached hereto as Attachment F, Pricing and Compensation Proposal, includes a schedule of the actual hourly labor rates and titles of all Consultant's Personnel assigned to the Project that have been approved by the Port Authority, including an organizational chart showing the names and titles of all staff working on the Project. .

1. The Port Authority reserves the right to audit and verify the hourly rate and time

billed for the Services of each such employee. It is understood that such employee shall only bill time to the Project for work actually performed on the Project and shall not bill time to the Project for holidays, vacation days, sick leave, personal days, maternity, medical, or family leave, nor for any other item included in the Overhead Rate, as set forth below.

2. When requesting salary or billing rate adjustments for one or more of its Personnel, the Consultant shall submit employee's name, title, current direct hourly rate or billing rate, proposed new direct hourly salary or billing rate, resulting percentage increase, effective date and reason for the requested change setting forth in detail any increased costs to the Consultant of providing the Services under this Agreement which has given rise to the request for increased salary. For adjustments submitted after the Effective Date of this Agreement, it is the intention of the Port Authority to grant an increase in pay if Consultant demonstrates compliance with all of the following conditions: that an increase in salary is (a) in accordance with the program of periodic merit and cost of living increases normally administered by the Port Authority; (b) warranted by increased costs of providing Services under this Agreement; (c) based upon increases in salaries and billing rates which are generally applicable to all of Consultant's clients; and (d) in accordance with the Authority's salary rate increase policy for the current year for Port Authority employees possessing comparable skills and experience. If, during any calendar year, the Port Authority limits are not available to Consultant in a timely fashion, increases falling within such limits may be approved retroactively, as appropriate. The amount of increase in salary or billing rate, if any, to be applicable under this Agreement shall, therefore, in all cases, be finally determined by the Director or his/her designee, in his/her sole and absolute discretion.

C. Overhead Rate. The overhead rate of _____% ("Overhead Rate") shall be applied to the Direct Personnel Costs as permitted above. Computation of the Overhead Rate shall include the following indirect cost items: applicable taxes, employee benefits, insurance payments, maternity leave, paternity leave, medical leave, family leave, disability benefits, bonuses, overtime pay, premium pay, parking and car allowance, fringe benefits, retirement plans, union dues, contributions and assessments required by Law, and collective bargaining, and as otherwise in compliance with 48 CFR Part 31.

1. An Overhead Rate is applicable for a one-year accounting period ("Provisional Overhead Rate"). Ninety (90) days prior to the expiration of the applicable accounting period, the Consultant shall submit one of the following: i) a current indirect cost audit (not currently under dispute) by a cognizant federal or state government agency; ii) a new calculation by the Consultant of the Overhead Rate in accordance with this Section 8.C; or iii) the Consultant shall submit to an audit of the Overhead Rate by the Authority. Should a subsequent audit rate differ from the rate set forth in this subparagraph, said rate shall be adjusted by a

contract modification.

2. The Overhead Rate shall represent reimbursement to Consultant for all other costs incurred by Consultant for such Personnel provided; however, for purposes of this Paragraph 8.C only, the term Personnel shall exclude any non exempt personnel eligible to receive overtime pay who belong to a labor union, perform work on the project under the terms of a collective bargaining agreement and in accordance with the contract documents, and are paid wages for such work. For the avoidance of doubt, the term "Personnel" for purposes of this Section 8.C, shall include members of a labor union who are exempt from receiving overtime pay and who render superintendents services on the Project.
3. The Overhead Rate shall not apply to partners, principals or temporary employees of Consultant.
4. The Consultant's actual Overhead Rate(s) during the term of this Agreement shall be subject to an audit by the Port Authority. The Authority reserves the right to retroactively adjust the Consultant's compensation in the event that a final audit of overhead indicates that the actual rate applicable during the Agreement is less than the rate(s) used during the Agreement. The Consultant is responsible for monitoring its actual rates to ensure compliance with the Provisional Overhead Rate applicable at the time.
5. The Overhead Rate shall not include any element that is attributable to the Consultant's Fixed Fee or addressed as a reimbursable expense or cost under this Agreement.

D. Costs of Subconsultants. Consultant shall be reimbursed for the costs of any subconsultants which shall only include an amount equivalent to the aggregate amount actually paid to subconsultants by Consultant. Under no circumstances shall any subconsultant contract, at any tier, contain a cost-plus-percentage-of-cost compensation structure.

E. Reimbursable Expenses. The Consultant shall also be compensated at an amount equal to the out-of-pocket expense, approved in writing and in advance by the Director, necessarily and reasonably incurred, and actually paid by you in the performance of your services hereunder. Out-of-pocket expenses are expenses that are unique to the performance of your services under this Agreement and generally contemplate the purchase of outside ancillary services, except that for the purpose of this Agreement, out-of-pocket expenses do include amounts for long distance telephone calls; rentals of equipment; travel and local transportation; and meals and lodging on overnight trips.

1. Notwithstanding the above the Authority will pay an amount approved in advance by the Director and computed as follows for the reproduction of submittal drawings, specifications and reports:
 - a. If the Consultant uses its own facilities to reproduce such documents, an amount computed in accordance with the billing rates the Consultant customarily charges for reproduction of such documents on agreements such as this, or
 - b. If the Consultant uses an outside vendor for the reproduction of such documents, the actual, necessary and reasonable amounts for the reproduction of such documents.
2. The expenses do not include expenses that are usually and customarily included as part of the Consultant's overhead. For the purposes of this Agreement out-of-pocket expenses do not include amounts for mailing and delivery charges, typing, utilization of computer systems, computer aided design and drafting (CADD), cameras, recording or measuring devices, flashlights and other small, portable equipment, safety supplies, phones, telephone calls, electronic messaging including FAX, Telex and telegrams, or expendable office supplies. Unless otherwise indicated, required insurance is not a reimbursable expense.
3. When the Consultant uses its employee's personal vehicle to provide services within the Port District, the Consultant shall be reimbursed for travel expenses beyond normal commuting costs at a rate not higher than the Annual Federal Mileage Reimbursement Rate (as determined by the Internal Revenue Services) per mile traveled by auto.
4. When the Consultant is asked to provide services outside the Port District, the actual cost of coach transportation as well as the cost for hotel accommodations and meals shall be reimbursable hereunder when approved in advanced in writing by the Engineer. If the Consultant chooses to travel each day to an assignment, where it would be more economical to take a hotel room near the assignment, the maximum reimbursable travel expenses shall not exceed the daily cost for meals and lodging. Reimbursable travel as provided herein shall be limited to one round trip per week's service except when otherwise approved in advance and in writing by the Director. The total number of reimbursable travel hours (for travel outside the Port District) will be calculated by reducing the actual travel time by three hours. The cost for all meals and lodging on approved overnight trips are limited to the amounts established by the United States General Services Administration for that locality. See www.gsa.gov.
5. You shall obtain the Director's written approval prior to making expenditures for out-of-pocket expenses in excess of \$1,000 per specific expenditure and for all overnight trips, which are reimbursable expenditures as set forth above. You shall substantiate all billings for out-of-pocket expenses in excess of \$25 with receipted bills and provide said receipts with the appropriate billing.

6. As used herein:

"Port District" is an area comprised of about 1,500 square miles in the States of New York and New Jersey, 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.

"Salaries paid to employees" or words of similar import shall mean salaries and amounts actually paid (excluding payments or factors for holidays, vacations, sick time, bonuses, profit participations and other similar payments) to architects, engineers, designers, drafters or other professional and technical employees of the Consultant for time actually spent directly in the performance of technical services hereunder and recorded on daily time records which have been approved by the employee's immediate supervisor, excluding the time of any employee of the Consultant to the extent that the time of such employee of the Consultant is devoted to typing/word processing, stenographic, clerical or administrative functions. Such functions shall be deemed to be included in the Overhead Rate.

9. A. The Authority reserves the right to make changes that are within the general scope of work of this Agreement. Such changes will be authorized only upon the issuance of a written Change Order. In the even such Change Order authorizes additional work, such work shall be compensated in accordance with the rates as set forth in this Agreement. If no such rates are applicable, then the parties will negotiate the mutually acceptable applicable rate(s).

B. Dispute Resolution.

1. To resolve all disputes and to prevent litigation, the parties to this Agreement authorize Authority's 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 Paragraph 9.B. shall be conclusive, final, and binding on the parties. The decision may be based on such assistance as Chief Engineer may find desirable.
2. The effect of Chief Engineer's decision with respect to any question or dispute under this Paragraph 9.B. 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.

3. All such questions or disputes under this Paragraph 9.B. 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.

10. In the event that subconsultants are engaged for services to be performed at the WTC Site, then subcontracts therefor must contain Exhibit A, FTA Provisions and the Subconsultants must complete and submit the certifications contained therein. Consultant acknowledges that in no case can a subconsultant agreement contain a cost-plus-percentage-of cost compensation structure.

11. 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 shall have the right to audit all such records.

The Authority shall 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.

12. On or about the fifteenth day of each month, you shall render a bill 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 shall, 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.

13. 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 without cause upon three (3) days notice to you. 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 hereinbefore set forth. 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, but 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.
- B. For Convenience. In addition to all other rights of revocation or termination hereunder and notwithstanding any other provision of this Contract the Port Authority may terminate this Contract and the rights of the Contractor hereunder without cause at any time upon five (5) days written notice to the Contractor and in such event this Contract 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 Contractor from the Port Authority shall be prorated when applicable on a daily basis. 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.

14. 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 Director. Such approval may be withheld if for any reason the Director believes that the publication of such information would be harmful to the public interest or is in any way undesirable.

15. Under no circumstances shall you or your subconsultants communicate in any way with any 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 Director, 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.

16. 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.

17. No certificate, payment (final or otherwise), acceptance of any work nor any other act or omission of the Authority or the Director 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.

18. 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 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 presently existing or arising in the future and whether presently known to either of the parties of 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, or subconsultant, or 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, whether 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.

19. 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, his 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.

20. You shall promptly and fully inform the Director in writing of any patents or patent 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.

21. 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 Director. 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.

22. The Authority has a long-standing practice of encouraging Minority Business Enterprises (MBEs) and Women Business Enterprises (WBEs) to seek business opportunities with it, either directly as Contractors/ Consultants or as subconsultants or subcontractors. "Minority-owned business" or "MBE" means a business entity which is at least 51 percent owned by one or more members of one or more minority groups, or, in the case of a publicly held corporation, at least 51 percent of the stock of which is owned by one or more members of one or more minority groups; and whose management and daily business operations are controlled by one or more such individuals who are citizens or permanent resident aliens. "Women-owned business" or "WBE" means a business which is at least 51 percent owned by one or more women; or, in the case of a publicly held corporation, 51 percent of the stock of which is owned by one or more women; and whose management and daily business operations are controlled by one or more women who are citizens or permanent resident aliens.

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

A. Black persons having origins in any of the Black African racial groups not of Hispanic origin;

B. Hispanic persons of Puerto Rican, Mexican, Dominican, Cuban, Central or South American culture or origin, regardless of race;

C. Asian and Pacific Islander persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent or the Pacific Islands;

D. American Indian or Alaskan Native persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification.

To ensure maximum participation in the Project, to the extent feasible and consistent with the exercise of good business judgment, the Port Authority has established an overall combined contract goal of seventeen percent (17%) participation by MBEs and WBEs for (i) all procurement, construction subcontracting, architectural & engineering services and ancillary service opportunities for the Work performed by Consultants. The Port Authority has also established goals that the construction labor force reflect the minority and female participation goals that will be applicable to Trade Contracts, and any subcontracts thereto.

Consultant shall use its good faith efforts to achieve the goals and policies described in Paragraph for Consultant's Services. Consultant shall facilitate, oversee, and scrutinize achievement of the goals and policies described herein for its Work. Consultant shall also report monthly to the Port Authority regarding progress and issues with respect to compliance and progress regarding the provisions of this Paragraph.

The provisions of this Paragraph shall be available and applicable to all subconsultants, of any tier, if any.

In order to facilitate meeting the MBE/WBE goals, Consultant shall use every good faith effort, to the maximum extent feasible, to utilize subcontractors who are Port Authority-certified MBEs or WBEs.

- i. The Port Authority has a list of certified MBE/WBE service firms, which list is available to Contractor at its request.
- ii. Consultant will be required to submit to the Office of Business and Job Opportunity for certification the names of MBE/WBE firms that Consultant proposes to use who are not on the list of Port Authority-certified MBE/WBE firms.
- iii. In order for a firm to be "certified" as an MBE or WBE, the Office of Business and Job Opportunity must make the determination and so certify.

The Consultant may request a full or partial waiver of the M/WBE participation goals set forth in this Contract by providing documentation demonstrating to the Manager, for approval by the Port Authority's Office of Business and Job Opportunity, that its good faith efforts did not result in compliance with the goals set forth above because participation by eligible M/WBEs could not be obtained at a reasonable price or that such M/WBEs were not available to adequately perform as subcontractors. The Consultant shall provide written documentation in support of its request to the Manager. The documentation shall include, but not be limited to, documentation demonstrating good faith efforts as described above,

which may include, proof that the Authority's directory does not contain M/WBEs in this specific field of work, a list of organizations contacted to obtain M/WBEs, and/or a list of M/WBEs contacted and their price quotes. If approved by the Authority's Office of Business and Job Opportunity, the Manager will provide written approval of the modified or waived M/WBE Participation Plan.

Subsequent to Contract award, all changes to the M/WBE Participation Plan must be submitted via a modified M/WBE Participation Plan to the Manager for review and approval by the Authority's Office of Business and Job Opportunity. For submittal of modifications to the M/WBE Plan, Contractors are directed to use form PA3749B, which may be downloaded at <http://www.panynj.gov/business-opportunities/become-vendor.html>. The Contractor shall not make changes to its approved M/WBE Participation Plan or substitute M/WBE subcontractors or suppliers for those named in their approved plan without the Manager's prior written approval. Unauthorized changes or substitutions, including performing the work designated for a subcontractor with the Contractor's own forces, shall be a violation of this section. Progress toward attainment of M/WBE participation goals set forth herein will be monitored throughout the duration of this Contract.

The Consultant shall also submit to the Manager, along with invoices, the Statement of Subcontractor Payments as the M/WBE Participation Report, annexed hereto as an attachment. The Statement must include the name and business address of each M/WBE subcontractor and supplier actually involved in the Contract, a description of the work performed and/or product or service supplied by each such subcontractor or supplier, the date and amount of each expenditure, and such other information that may assist the Manager in determining the Consultant's compliance with the foregoing provisions.

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

To be "certified" a firm must be certified by the Authority's Office of Business and Job Opportunity.

In order to facilitate the meeting of this goal, the Consultant's shall use every good faith effort to utilize subconsultants who are certified MBEs or WBEs to the maximum extent feasible.

The Authority has a list of certified MBE/WBE service firms that is available to you at your request. The Consultant will be required to submit to the Authority's Office of Business and Job Opportunity for certification the names of MBE/WBE firms he proposes to use who are not on the list of certified MBE/WBE firms.

23. NOTIFICATION OF SECURITY REQUIREMENTS

The Authority has facilities, systems, and projects where terrorism or other criminal acts may have a significant impact on life safety and key infrastructures. 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, as determined by the Authority. These security requirements may include but are not limited to the following:

- Consultant/subconsultant identity checks and background screening, including but not limited to: 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 federal, state, and/or local criminal justice agency information databases and files; screening of any terrorist identification files; multi-year check of personal, employment and/or credit history; access identification to include some form of biometric security methodology such as fingerprint, facial or iris scanning, or the like;
- Requiring the Consultant and subcontractors, when appropriate, sign Non-Disclosure Agreements (NDAs), or an Acknowledgment of an existing NDA, provided by the Authority as a condition of being granted access to Confidential Information categorized and protected as per *The Port Authority of New York & New Jersey Information Security Handbook (October 15, 2009, corrected as of February 9, 2009)*.
- Issuance of Photo Identification cards;
- Access control, inspection, and monitoring by security guards.

The Consultant may be required to have its staff, and any subconsultant's staff, authorize the Authority or its designee to perform background checks. Such authorization shall be in a form acceptable to the Authority. The Consultant may also be required to use an organization designated by the Authority to perform the background checks. The cost for said background checks shall be reimbursable to the Consultant as a Reimbursable Expense as provided herein.

The Authority may impose, increase, and/or upgrade security requirements for the Consultant and its staff and subconsultants during the term of this Agreement to address changing security conditions and/or new governmental regulations.

24. CONFIDENTIAL INFORMATION

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

C. The Consultant shall hold all such confidential 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 Director 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.

25. The Consultant assumes the following distinct and several risks to the extent arising from the negligent or willful intentional acts or omissions of the Consultant or its subconsultants 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 of loss or damage to any property of the Consultant or its subconsultants 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 or 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 or 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 or the Authority for the payment of workers' compensation, whether such claims are made and whether such injuries, damage and 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 it in the defense, settlement or satisfaction thereof, including expenses of attorneys. If so directed, the Consultant shall defend against any claim described in subparagraphs B, C and D above, in which event he shall not without obtaining express advance permission from the General Counsel of the Authority raise any defense involving in any way 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 it 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 it 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 it would assume or the claims for which it 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.

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

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

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

27. 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 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 current version of the Code of Ethics in effect on the commencement date of this Agreement (a copy of which is available upon request to the individual named in the clause hereof entitled "Consultant's Questions"), nor does this organization have any knowledge of any act on the part of an Authority employee or former Authority employee relating either directly or indirectly to this organization which constitutes a breach of the ethical standards set forth in said Code;

E. no person or selling agency other than a bona fide employee or bona fide established commercial or selling agency maintained by the 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 foregoing certifications, 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 foregoing certifications, 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 foregoing certifications, the Consultant shall so state and shall furnish with the signed proposal a signed statement, which sets forth in detail the reasons therefor. If the Consultant is uncertain as to whether it can make the foregoing certifications, it shall so indicate in a signed statement furnished with its proposal, setting forth in such statement the reasons for its uncertainty. With respect to the foregoing certification in paragraph "27G.", 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 Director of the Procurement Department of the Authority). Such disclosure is to be updated, as necessary, up to the time of award of this Agreement. As a result of such disclosure, the Authority shall take appropriate action up to and including a finding of non-responsibility.

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

Notwithstanding that the Consultant may be able to make the foregoing certifications at the time the proposal is submitted, the Consultant shall immediately notify the Authority in writing during the period of irrevocability of proposals on this Agreement or any extension of such period of any change of circumstances which might under this clause make it unable to make the foregoing certifications or require disclosure. The foregoing certifications or signed statement shall be deemed to have been made by the Consultant with full knowledge that they would become a part of the records of the Authority and that the Authority will rely on their truth and accuracy in awarding this Agreement. In the event that the Authority should determine at any time prior or subsequent to the award of this Agreement that the Consultant has falsely certified as to any material item in the foregoing certifications or has willfully or fraudulently furnished a signed statement which is false in any material respect, or has not fully and accurately represented any circumstance with respect to any item in the foregoing certifications required to be disclosed, the Authority may determine that the Consultant is not a responsible Consultant with respect to its proposal on the Agreement or with respect to future proposals on Authority agreements and may exercise such other remedies as are provided to it by the Agreement with respect to these matters. In addition, Consultants are advised that knowingly providing a false certification or statement pursuant hereto may be the basis for prosecution for offering a false instrument for filing (see, e.g. New York Penal Law, Section 175.30 et seq.). Consultants are also advised that the inability to make such certification will not in and of itself disqualify a Consultant, and that in each instance the Authority will evaluate the reasons therefor provided by the Consultant.

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

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

Consultants are advised that the Authority has adopted a policy to the effect that in awarding its agreements it will honor any determination by an agency of the State of New York or New

Jersey that a Consultant is not eligible to propose on or be awarded public agreements because the Consultant has been determined to have engaged in illegal or dishonest conduct or to have violated prevailing rate of wage legislation.

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

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

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

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

In addition, during the term of this agreement, the Consultant shall not make an offer of employment or use confidential information in a manner proscribed by the version of the Code of Ethics and Financial Disclosure effective on the commencement date of this Agreement(a copy of which is available upon request to the Office of the Secretary of the Authority). Without

the express written approval of the Chief Engineer, you shall keep confidential, and shall require your employees, your subconsultants, and your subconsultant's employees to keep confidential a) all information disclosed by the Authority or its consultants to you or b) developed by you or your subconsultants in the performance of services hereunder. Disclosure of any such information shall constitute a material breach of the Agreement.

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

30. CONFLICT OF INTEREST

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

agreements which result, directly or indirectly, from the services provided by the Consultant hereunder.

31. DEFINITIONS

As used in sections 26 to 30 above, the following terms shall mean:

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

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

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

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

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

32. The entire agreement between the parties is contained herein 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 his duly authorized representative, provided, however, that termination in the manner hereinbefore expressly provided shall be effective as so provided.

33. 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.

34. 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.

35. 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.

36. 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, (ii) transmitted by certified mail, postage prepaid, return receipt requested, or (iii) transmitted by telecopier or facsimile (as elected by the party giving such notice). Notices shall be addressed and delivered as follows:

To Owner: The Port Authority of New York and New Jersey
 Attention: Steven Plate
 Director, World Trade Center Construction
 115 Broadway – 10th Floor
 New York, New York 10006

With a copy to: The Port Authority of New York and New Jersey
 Attention: General Counsel
 225 Park Avenue South
 New York, New York 10003

To Consultant:

Very truly yours,

THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY

Lillian D. Valenti
Director
Procurement Department

Date _____

ACCEPTED:
FIRM NAME

By: _____

Title: _____

Date: _____

ATTACHMENT A

Performance of Expert Professional Transportation Planning and Traffic Engineering Services for the World Trade Center Reconstruction

SCOPE OF SERVICES

I. Background

The Port Authority of New York and New Jersey (the “Authority” or “Port Authority”) is an agency of the States of New York and New Jersey, created and existing by virtue of the Compact of April 30, 1921, made by and between the two States, and thereafter consented to by the Congress of the United States. It is charged with providing transportation, terminal and other facilities of trade and commerce within the Port District. The Port District comprises an area of about 1,500 square miles in both States, centering about New York Harbor. The Port District includes the cities of New York and Yonkers in New York State, 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, Teterboro, LaGuardia and Stewart International Airports), marine terminals in both New Jersey and New York (Port Newark and Elizabeth, Howland Hook and Brooklyn Piers); and its interstate tunnels and bridges (the Lincoln and Holland Tunnels; the George Washington, Bayonne, and Goethals Bridges; and the Outerbridge Crossing), which are vital “Gateways to the Nation.”

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

The Port Authority is hereby seeking transportation planning and traffic engineering services in connection with the redevelopment of the World Trade Center (“WTC”), which are more fully described herein. These services would be managed by and coordinated through the World Trade Center Construction department’s Office of Program Logistics (the “Office”), which works to facilitate the movement of pedestrians and vehicles around the World Trade Center Site (the “WTC Site” or the “Site”); support construction vehicle access to the Site; and mitigate impacts of WTC construction activity. The Office also serves as the focal point for regular communication with community members, businesses and elected officials of Lower Manhattan regarding the status of the World Trade Center rebuilding effort. To carry out these activities, the Office undertakes efforts in three main areas:

- **Planning/Analysis:** Developing and maintaining a proactive approach to the identification and resolution of challenges by designing short- and long-term plans to overcome critical path obstacles. Logistics planning will be tailored in phases: first, to address the current conditions; second, to address the challenges as certain key milestones are achieved and the Site transitions from a pure construction Site to an operational facility, such as on the opening of the September 11th Memorial Plaza; third, when construction is finally complete and the Site is fully operational.
- **Liaison:** Maintaining an active network of internal and external WTC stakeholder groups to collaboratively address time-sensitive schedules for construction, with a goal of maximizing safety and minimizing financial implications as well as public inconvenience.
- **Communication:** Providing a central information source for stakeholders, agencies, and the general public regarding WTC program logistics and ongoing processes.

To accomplish its goals, staff has been dedicated to issues such as transportation, working with New York City agencies on permitting, public outreach and communication, as well as scheduling and coordinating transparency.

II. Scope of Work

The services of the Consultant shall generally consist of performing traffic engineering and transportation planning services to (1) plan for the efficient movement of pedestrians and vehicles around the WTC Site; and (2) support construction vehicle access to the Site and (3) mitigate impacts of WTC construction activity. Services shall also consist of performing community outreach tasks and preparing presentations, newsletters and other outreach deliverables described more fully herein. As construction advances on the WTC Site, there will be accompanying changes to patterns of pedestrian and vehicular circulation in the surrounding areas. Transportation planning principles, techniques and methods will be applied in the context of ongoing construction activity, with an emphasis on anticipating and mitigating construction impacts and maintaining the flow of pedestrian and vehicular traffic around the Site. In later years, as portions of the Site are completed and become operational, planning and engineering efforts may include studies of pedestrian and vehicular circulation on the Site itself. Understanding the sequence of construction activity over the duration of the job will be critical to performing the required transportation planning analyses. In addition, strong graphical and presentation development skills will be required to communicate findings and concepts developed through analytical work to general audiences. Finally, strong outreach experience will be necessary to communicate effectively with various stakeholders in Lower Manhattan.

Given the complex nature and the location of the Site within a dense and congested area of New York City, this work will require the application of creative and innovative evaluation procedures and design solutions.

The Contract will remain in effect for a four-year term (48 months), with two one-year (12 month) extension options, at the exclusive option of the Port Authority.

III. Description of Tasks

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

Task A. Study Current Circulation Patterns

Study current circulation patterns of pedestrians and both construction and non-construction vehicles in the WTC Site area. This will be done at the outset of the Contract, then periodically as directed by the Authority. Sub-tasks involved may include, but not be limited to:

1. Field investigations, observations or measurements
2. Project scoping including preparing a schedule, budget, and an estimate of staffing levels in anticipated hours of work per week (Once at outset of contract, then periodically, as requested by the Authority)
3. Preparation or modification of construction staging diagrams
4. Pedestrian and vehicular traffic data analysis
5. Presentation of findings – preparation of reports, graphics & presentations to effectively communicate results and key findings of planning and engineering analyses (Anticipate one report, four presentations per year for duration of the contract)
6. Provide staff to work with Authority staff on various assignments (One senior executive or firm principal; one project manager; staff planners and engineers)
7. Administrative tasks required to support provision of services including, but not limited to, tracking efforts against scope, schedule, and budget on a monthly basis (Monthly for duration of contract)

Task B. Assess Future Circulation Patterns

Assess future circulation patterns for pedestrians and vehicles in the WTC Site area in view of construction staging and phasing of all projects on the WTC Site. Develop a phased transportation / circulation plan for pedestrians and vehicles that addresses future conditions at logical intervals over the duration of construction (e.g. as changes in construction activity impact circulation or parts of the Site are completed and become operational), and in the final condition upon completion of construction. This will be done on an ongoing basis. Assume one planning study per quarter for duration of contract. Sub-tasks involved may include, but not be limited to:

1. Field investigations, observations or measurements
2. Project scoping including preparing a schedule, budget, and an estimate of staffing levels in anticipated hours of work per week (Once at outset of contract, then periodically, as requested by the Authority)
3. Pedestrian and vehicular traffic data analyses

4. Vehicular traffic operational analyses
5. Travel demand and/or pedestrian modeling (Anticipate once per year for years one and two of the contract, then one additional effort for the remainder of the contract)
6. Prepare conceptual or preliminary designs (Depending on proposed circulation plan; anticipate once per year for duration of contract)
7. Presentation of findings – preparation of reports, graphics & presentations to effectively communicate results and key findings of planning and engineering analyses (four reports, eight presentations per year for duration of the contract)
8. Provide staff to work with Authority staff on various assignments (One senior project executive; one project manager; staff planners and engineers)
9. Administrative tasks required to support provision of services including, but not limited to, tracking efforts against scope, schedule, and budget on a monthly basis (Monthly for duration of contract)

Task C. Mitigation of Construction Impacts

Develop plans to protect or mitigate impacts of construction on the movement of pedestrians and vehicles in the area of the WTC Site in its current condition as well as over time as construction progresses. These services will be performed as necessary based on analyses described in A and B above as well as on-site construction activity. Assume one mitigation study per quarter for duration of contract. Sub-tasks involved may include, but not be limited to:

1. Field investigations, observations or measurements
2. Project scoping including preparing schedule, budget, and an estimate of staffing levels in anticipated hours of work per week (Once at outset of a planning effort, then periodically, as requested by the Authority)
3. Pedestrian and vehicular traffic data analyses
4. Vehicular traffic operational analyses
5. Travel demand and/or pedestrian modeling (Anticipate twice for duration of contract)
6. Prepare conceptual or preliminary designs (Depending on proposed mitigation; anticipate once per year for duration of contract)
7. Presentation of findings – preparation of reports, graphics & presentations to effectively communicate results and key findings of planning and engineering analyses (four reports, eight presentations per year for duration of the contract)
8. Provide staff to work with Authority staff on various assignments (One senior project executive; one project manager; staff planners and engineers)
9. Administrative tasks required to support provision of services including, but not limited to, tracking efforts against scope, schedule, and budget on a monthly basis (Monthly for duration of contract)

Task D. Construction Vehicle Staging

In view of current and anticipated construction activity, identify construction vehicle staging requirements and potential staging locations both proximate and remote to the Site. Assess the impacts on and associated mitigation measures associated with proposed areas. These

studies will be performed as necessary. Assume two studies per year for duration of contract. Sub-tasks involved may include, but not be limited to:

1. Field investigations, observations or measurements
2. Project scoping including preparing a schedule, budget, and an estimate of staffing levels in anticipated hours of work per week (Once at outset of a planning effort, then periodically, as requested by the Authority)
3. Vehicular traffic data analyses
4. Vehicular traffic operational analyses (quarterly for duration of contract)
5. Assess on-site staging capacity in view of construction staging plans and construction vehicle on-site dwelling times. (Twice per year for years one and two of the contract, then once per year for the duration of contract)
6. Travel demand and pedestrian modeling (Anticipate once for duration of contract)
7. Presentation of findings – preparation of reports, graphics & presentations to effectively communicate results and key findings of planning and engineering analyses (Two reports, four presentations per year for duration of the contract)
8. Provide staff to work with Authority staff on various assignments (One senior project executive; one project manager; staff planners and engineers)
9. Administrative tasks required to support provision of services including, but not limited to, tracking efforts against scope, schedule, and budget on a monthly basis (Monthly for duration of contract)

Task E. Stakeholder Transportation Issues

Study transportation issues related to WTC operations identified by community stakeholders, businesses, or other external entities as needed. These studies will be performed as necessary. Assume one study per quarter for duration of contract. Sub-tasks involved may include, but not be limited to:

1. Field investigations, observations or measurements
2. Project scoping including preparing a schedule, budget, and an estimate of staffing levels in anticipated hours of work per week (Once at outset of a planning effort, then periodically, as requested by the Authority)
3. Pedestrian and/or vehicular traffic data analyses
4. Vehicular traffic operational analyses
5. Prepare conceptual or preliminary designs (Depending on proposed mitigation; anticipate once per year for duration of contract)
6. Presentation of findings – preparation of reports, graphics & presentations to effectively communicate results and key findings of planning and engineering analyses (four reports, eight presentations per year for duration of the contract)
7. Provide staff to work with Authority staff on various assignments (One senior project executive; one project manager; staff planners and engineers)
8. Administrative tasks required to support provision of services including, but not limited to, tracking efforts against scope, schedule, and budget on a monthly basis (Monthly for duration of contract)

Task F. Study Circulation of Construction and Delivery Vehicles

Study the circulation of construction and delivery vehicles entering the Site and assess impacts on city streets. Identify mitigations if any impacts are found. This will be done on an ongoing basis. Assume one planning study per quarter for duration of contract. Sub-tasks involved may include, but not be limited to:

1. Field investigations, observations or measurements
2. Project scoping including schedule, budget, and an estimate of staffing levels in anticipated hours of work per week (Once at outset of a planning effort, then periodically, as requested by the Authority)
3. Preparation or modification of construction staging diagrams
4. Pedestrian and vehicular traffic data analysis
5. Vehicular traffic operational analyses
6. Travel demand and pedestrian modeling (Anticipate once for duration of contract)
7. Prepare conceptual or preliminary designs (Depending on proposed mitigations; anticipate once per year for duration of contract)
8. Presentation of findings – preparation of reports, graphics & presentations to effectively communicate results and key findings of planning and engineering analyses (four reports, eight presentations per year for duration of the contract)
9. Provide staff to work with Authority staff on various assignments (One senior project executive; one project manager; staff planners and engineers)
10. Administrative tasks required to support provision of services including, but not limited to, tracking efforts against scope, schedule, and budget on a monthly basis (Monthly for duration of contract)

Task G. Study Access to WTC Site

Study construction vehicle access to the WTC Site in order to support and enhance construction productivity. Studies may include analyses of truck turning radii, signalization routing, and off-site truck staging. This will be done on an ongoing basis. Assume one planning study per quarter for duration of contract. Sub-tasks involved may include, but not be limited to:

1. Field investigations, observations or measurements
2. Project scoping including schedule, budget, and an estimate of staffing levels in anticipated hours of work per week (Once at outset of a planning effort, then periodically, as requested by the Authority)
3. Preparation or modification of construction staging diagrams
4. Pedestrian and vehicular traffic data analysis
5. Vehicular traffic operational analyses
6. Prepare conceptual or preliminary designs (Depending on proposed circulation plans; anticipate once per year for duration of contract)
7. Presentation of findings – preparation of reports, graphics & presentations to effectively communicate results and key findings of planning and engineering analyses (four reports, eight presentations per year for duration of the contract)

8. Provide staff to work with Authority staff on various assignments (One senior project executive; one project manager; staff planners and engineers)
9. Administrative tasks required to support provision of services including, but not limited to, tracking efforts against scope, schedule, and budget on a monthly basis (Monthly for duration of contract)

Task H. Pedestrian and Vehicular Data Collection

Collect pedestrian and vehicular traffic data at locations in the vicinity of the WTC Site and provide a memorandum describing the data. (Anticipate a maximum of twice per year for duration of contract). Sub-tasks involved may include, but not be limited to:

1. Conduct a data collection and reduction program to acquire weekday and weekend pedestrian and vehicular volume data at various locations near the WTC Site twice per year. The counts will be conducted on a weekday and a Saturday with the pedestrian counts to be done during the AM peak hours, Midday hours and PM peak hours. The pedestrian data collection effort will consist of approximately 37 locations. The vehicular data collection effort will consist of manual turning movement counts at approximately 17 locations, and Automatic Traffic Recorder (ATR) counts at approximately 22 locations.
2. Prepare report and presentation describing results (twice per year for duration of contract)

Task I. Project Meetings and Coordination

In completing the studies and efforts described above, the Consultant will be required to attend various meetings. These will include overall status briefings on a weekly basis, bi-weekly staff meetings, as well as working meetings to gather information and coordinate with contractors and project managers working on the various construction projects on the WTC Site. In addition, Consultant's senior level staff will periodically attend WTC-related meetings with various stakeholders to provide support and advice on transportation planning or traffic engineering issues.

1. Anticipate an average of 10 meetings per week for the duration of the contract
2. Prepare relevant materials or agenda to facilitate productive meetings
3. Prepare meeting minutes, whitepapers or other appropriate follow-up within two business days, as directed by the Authority

OPTIONAL TASK

The Authority reserves the right to award along with the base contract term or exercise as an option at any time during the base contract term and/or extended Option Period(s) the following Optional Task J – Outreach and Communications for no less than a 12 month duration. If the Authority elects to exercise Optional Task J after base contract award, thirty (30) days notice of intent will be provided.

Task J. Outreach and Communications

Perform community outreach and liaison functions to communicate effectively with community members, businesses, elected officials, and other stakeholder groups regarding the World Trade Center Site. These efforts will be done on an ongoing basis. Sub-tasks involved may include, but not be limited to (estimated frequency of tasks for this service in parentheses):

1. Project scoping including preparing a schedule, budget, and an estimate of staffing levels in anticipated hours of work per week (Once at outset of contract, then periodically as needed)
2. Project meetings (Anticipate an average of 8 per week for duration of contract)
3. Work with Authority staff to prepare outreach and communications deliverables including, but not limited to:
 - a. Site-wide weekly construction schedules
 - b. Targeted weekly construction look-aheads
 - c. Monthly WTC construction progress newsletter
 - d. Construction alerts as necessary (average of one per week)
 - e. Host guided walks around the Site perimeter to gather stakeholder input (average of six per year)
 - f. Quarterly report on all Office of Program Logistics activities including services described above
 - g. Brief monthly write-ups on Office of Program Logistics activities for external reporting purposes
 - h. Quarterly presentation to community board on WTC construction status
 - i. Quarterly presentation to elected officials and other stakeholders on WTC construction status
 - j. Additional presentations on WTC construction activity and Office of Program logistics efforts to various internal and external audiences (average of one per month for duration of contract)
 - k. Coordinate and prepare agenda for biweekly meeting with stakeholder groups adjacent to Site
4. Provide staff to work with Authority staff on various assignments (One senior executive or principal; one project manager; staff planners and / or designers)
5. Administrative tasks to support provision of services, including but not limited to tracking efforts against scope, schedule, and budget on a monthly basis (Monthly for duration of contract)

ATTACHMENT B

AGREEMENT ON TERMS OF DISCUSSION

The Port Authority's receipt or discussion of any information (including information contained in any proposal, vendor qualification, ideas, models, drawings, or other material communicated, submitted 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 therefor 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. The foregoing applies to any information, whether or not given at the invitation of the Authority.

Notwithstanding the above, and without assuming any legal obligation, the Port Authority will employ reasonable efforts, subject to the provisions of the Authority's Freedom of Information Policy and Procedure adopted by the Port Authority's Board of Commissioners on November 20, 2008, which may be found on the Authority website at <http://www.panynj.gov/corporate-information/pdf/Freedom-of-Information-Policy-and-Procedure.pdf>, not to disclose to any competitor of the undersigned, information submitted which are trade secrets or which is maintained for the regulation or supervision of commercial enterprise which, if disclosed, would cause substantial injury to the competitive position of the enterprise, and which information is identified by the Proposer in writing as proprietary, which may be disclosed by the undersigned to the Port Authority as part of or in connection with the submission of a proposal.

(Company)

(Signature)

(Title)

(Date)

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

Attachment C-1

Proposer Prerequisite A.

* Note - Duplicate form as necessary *

Reference RFP Section II – Proposer Prerequisites

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

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

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

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

Note – Client Contact must be employee of Company

Attachment C-2

Proposer Prerequisite B.

* Note - Duplicate form as necessary *

Reference RFP Section II – Proposer Prerequisites

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

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

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

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

Note – Client Contact must be employee of Company

PROCUREMENT M/WBE PARTICIPATION PLAN
PA3749B / 03-09
Office of Business and Job Opportunity

PAGE: _____ OF _____

NOTE: The Proposer/Bidder shall submit to the Manager, Line/Facility Dept. Form PA 3749C - MODIFIED PLAN for any changes to the original plan: i.e.; subcontractor, dollar amount or work performed.
 If more than 1 page is used, complete totals on last page.

Purchase Order #: _____

Proposer/Bidder Name: _____

Mailing Address: _____

Telephone Number: _____

Contract Description: _____

Contract Amount: _____

Contract Goals: **MBE** _____ **WBE** _____

Name, Address, Phone Number of PA Certified M/WBE subcontractor (including name of contact person)	Indicate MBE or WBE	Description of Work, Services to be provided. Where applicable, specify, “supply” or “install or both “supply” and “install.”	Anticipated date work will start and finish	Approximate \$ amount of M/WBE Subcontract	M/WBE % of Total Contract Amount
TOTAL:					

Signature of Contractor: _____

Print Name: _____

Title: _____ **Date** _____

FOR OBJO USE ONLY	
Contract Goals: ☐ Approved ☐ Waived ☐ Rejected	
Reviewed by: _____	
OBJO Business Development Representative	
Print Name: _____	Date _____

INSTRUCTIONS

PROPOSER INSTRUCTIONS: In accordance with Section 6. M/WBE Subcontracting Provisions, the proposer shall submit this form as the M/WBE Participation Plan and/or good faith documentation as part of Section 7. Proposal Submission Requirements.

BIDDER INSTRUCTIONS: In accordance with Part VI of the contract book, the bidder shall submit a M/WBE Participation Plan and/or best efforts documentation to the Manager or designee identified in the contract book within 10 days of contract award.

MANAGER/DESIGNEE INSTRUCTIONS: After a review of the submitted M/WBE Participation plan, forward to the Office of Business and Job Opportunity via fax at (212) 435-7828 or PAD to 233PAS 4th Floor for review and approval. Approved/waived/rejected plan will be returned within 5 business days of receipt of this document. Manager/Designee will advise vendor of the results of the M/WBE Participation Plan review.

ATTACHMENT E

STAFFING PLAN

RFP No. _____

PROPOSER NAME: _____

Term	Staff	Year 1 (1st, 12 Month Period)	Year 2 (2nd, 12 Month Period)	Year 3 (3rd, 12 Month Period)	Year 4 (4th, 12 Month Period)	Option Year 1 (5th, 12 Month Period)	Option Year 2 (6th, 12 Month Period)	TOTAL (Base + Option Yrs)
		HOURS	HOURS	HOURS	HOURS	HOURS	HOURS	
TASK A. Study Current Circulation Patterns	Principal							
	Project Manager							
TASK A SUB-TOTAL								
TASK B. Assess Future Circulation Patterns	Principal							
	Project Manager							
TASK B SUB-TOTAL								
TASK C. Mitigation of Construction Impacts	Principal							
	Project Manager							
TASK C SUB-TOTAL								

ATTACHMENT E

STAFFING PLAN

RFP No. _____

PROPOSER NAME: _____

Term	Staff	Year 1 (1st, 12 Month Period)	Year 2 (2nd, 12 Month Period)	Year 3 (3rd, 12 Month Period)	Year 4 (4th, 12 Month Period)	Option Year 1 (5th, 12 Month Period)	Option Year 2 (6th, 12 Month Period)	TOTAL (Base + Option Yrs)
		HOURS	HOURS	HOURS	HOURS	HOURS	HOURS	
TASK D. Construction Vehicle Staging	Principal							
	Project Manager							
TASK D SUB-TOTAL								
TASK E. Stakeholder Transportation Issues	Principal							
	Project Manager							
TASK E SUB-TOTAL								
TASK F. Study Circulation of Construction and Delivery Vehicles	Principal							
	Project Manager							
TASK F SUB-TOTAL								

ATTACHMENT E

STAFFING PLAN

RFP No. _____

PROPOSER NAME: _____

Term	Staff	Year 1 (1st, 12 Month Period)	Year 2 (2nd, 12 Month Period)	Year 3 (3rd, 12 Month Period)	Year 4 (4th, 12 Month Period)	Option Year 1 (5th, 12 Month Period)	Option Year 2 (6th, 12 Month Period)	TOTAL (Base + Option Yrs)
		HOURS	HOURS	HOURS	HOURS	HOURS	HOURS	
TASK G. Study Access to WTC Site	Principal							
	Project Manager							
TASK G SUB-TOTAL								
TASK H. Pedestrian and Vehicular Data Collection	Principal							
	Project Manager							
TASK H SUB-TOTAL								
TASK I. Project Meetings and Coordination	Principal							
	Project Manager							
TASK I SUB-TOTAL								
TOTAL								

ATTACHMENT E

STAFFING PLAN

RFP No. _____

PROPOSER NAME: _____

Term	Staff	Year 1 (1st, 12 Month Period)	Year 2 (2nd, 12 Month Period)	Year 3 (3rd, 12 Month Period)	Year 4 (4th, 12 Month Period)	Option Year 1 (5th, 12 Month Period)	Option Year 2 (6th, 12 Month Period)	TOTAL (Base + Option Yrs)
		HOURS	HOURS	HOURS	HOURS	HOURS	HOURS	
Optional TASK J. Outreach and Communications	Principal							
	Project Manager							
Optional TASK J SUB-TOTAL								
TOTAL with Option Task J								

ATTACHMENT F - PRICING AND COMPENSATION PROPOSAL

RFP No. _____

PROPOSER NAME: _____

SUMMARY

Pricing and Compensation	Base Contract Term 4 Years (48 Months)	Option Year 1	Option Year 2	TOTAL
1. Consultant's Fixed Fee (see Section 8.A of the Agreement)				
2. Direct Personnel Costs (see Section 8.B of the Agreement)				
a) Staff Titles				
b) Principals and Partners				
3. Over Head Rate / Indirect Costs (see Section 8.C of the Agreement)				
4. Subconsultants Costs (see Section 8.D of the Agreement)				
a) Staff Titles				
b) Principals and Partners				
5. Reimbursable Expenses (see Section 8.E of the Agreement)				
6. Total Proposed Pricing & Compensation				

ATTACHMENT F - PRICING AND COMPENSATION PROPOSAL

RFP No. _____

PROPOSER NAME: _____

SUBCONSULTANT'S SUMMARY

Pricing and Compensation	Base Contract Term 4 Years (48 Months)	Option Year 1	Option Year 2	TOTAL
1. Subconsultant's Fixed Fee				
2. Subconsultant's Personnel Costs				
a) Staff Titles				
b) Principals and Partners				
3. Subconsultant's Overhead Rate				
4. Subconsultant's Reimbursable Expenses				
5. Total Proposed Pricing & Compensation				

This form is to be submitted for each Subconsultant. Reproduce as necessary.

ATTACHMENT F - PRICING AND COMPENSATION PROPOSAL

RFP No. _____

PROPOSER NAME: _____

COST DETAIL

Term	Staff	Hourly Billing Rate	Year 1 (1st, 12 Month Period)		Year 2 (2nd, 12 Month Period)		Year 3 (3rd, 12 Month Period)		Year 4 (4th, 12 Month Period)		Option Year 1 (5th, 12 Month Period)		Option Year 2 (6th, 12 Month Period)		TOTAL (Base + Option Yrs)
			HOURS	AMOUNT	HOURS	AMOUNT	HOURS	AMOUNT	HOURS	AMOUNT	HOURS	AMOUNT	HOURS	AMOUNT	
TASK A. Study Current Circulation Patterns	Principal														
	Project Manager														
TASK A SUB-TOTAL															
TASK B. Assess Future Circulation Patterns	Principal														
	Project Manager														
TASK B SUB-TOTAL															
TASK C. Mitigation of Construction Impacts	Principal														
	Project Manager														
TASK C SUB-TOTAL															

ATTACHMENT F - PRICING AND COMPENSATION PROPOSAL

RFP No. _____

PROPOSER NAME: _____

COST DETAIL

Term	Staff	Hourly Billing Rate	Year 1 (1st, 12 Month Period)		Year 2 (2nd, 12 Month Period)		Year 3 (3rd, 12 Month Period)		Year 4 (4th, 12 Month Period)		Option Year 1 (5th, 12 Month Period)		Option Year 2 (6th, 12 Month Period)		TOTAL (Base + Option Yrs)
			HOURS	AMOUNT	HOURS	AMOUNT	HOURS	AMOUNT	HOURS	AMOUNT	HOURS	AMOUNT	HOURS	AMOUNT	
TASK D. Construction Vehicle Staging	Principal														
	Project Manager														
TASK D SUB-TOTAL															
TASK E. Stakeholder Transportation Issues	Principal														
	Project Manager														
TASK E SUB-TOTAL															
TASK F. Study Circulation of Construction and Delivery Vehicles	Principal														
	Project Manager														
TASK F SUB-TOTAL															

ATTACHMENT F - PRICING AND COMPENSATION PROPOSAL

RFP No. _____

PROPOSER NAME: _____

COST DETAIL

Term	Staff	Hourly Billing Rate	Year 1 (1st, 12 Month Period)		Year 2 (2nd, 12 Month Period)		Year 3 (3rd, 12 Month Period)		Year 4 (4th, 12 Month Period)		Option Year 1 (5th, 12 Month Period)		Option Year 2 (6th, 12 Month Period)		TOTAL (Base + Option Yrs)
			HOURS	AMOUNT	HOURS	AMOUNT	HOURS	AMOUNT	HOURS	AMOUNT	HOURS	AMOUNT	HOURS	AMOUNT	
TASK G. Study Access to WTC Site	Principal														
	Project Manager														
TASK G SUB-TOTAL															
TASK H. Pedestrian and Vehicular Data Collection	Principal														
	Project Manager														
TASK H SUB-TOTAL															
TASK I. Project Meetings and Coordination	Principal														
	Project Manager														
TASK I SUB-TOTAL															
TOTAL															

ATTACHMENT F - PRICING AND COMPENSATION PROPOSAL

RFP No. _____

PROPOSER NAME: _____

COST DETAIL

Term	Staff	Hourly Billing Rate	Year 1 (1st, 12 Month Period)		Year 2 (2nd, 12 Month Period)		Year 3 (3rd, 12 Month Period)		Year 4 (4th, 12 Month Period)		Option Year 1 (5th, 12 Month Period)		Option Year 2 (6th, 12 Month Period)		TOTAL (Base + Option Yrs)
			HOURS	AMOUNT	HOURS	AMOUNT	HOURS	AMOUNT	HOURS	AMOUNT	HOURS	AMOUNT	HOURS	AMOUNT	
Optional TASK J. Outreach and Communications	Principal														
	Project Manager														
Optional TASK J SUB-TOTAL															
TOTAL with Option Task J															

ATTACHMENT F - PRICING AND COMPENSATION PROPOSAL

RFP No. _____

PROPOSER NAME: _____

REIMBURSABLE EXPENSES WORKSHEET

	Out of Pocket Expenses *	Year 1 (1st, 12 Month Period)	Year 2 (2nd, 12 Month Period)	Year 3 (3rd, 12 Month Period)	Year 4 (4th, 12 Month Period)	Option Year 1 (5th, 12 Month Period)	Option Year 2 (6th, 12 Month Period)	TOTAL (Base + Option Yrs)
1								
2								
3								
4								
5								
6								
7								
8								
9								
10								
11								
12								
13								
14								
15								
16								
17								
18								
19								
20								
	TOTAL							

* Itemize all reimbursable / out-of-pocket expenses included in Proposal

FEDERAL TRANSIT ADMINISTRATION REQUIREMENTS

1.	Incorporation of Federal Transit Administration Terms	1
2.	Federal Changes	1
3.	No Federal Government Obligations to Third Parties	1
4.	Organizational Conflict of Interest	1
5.	Certification – Debarment and Suspension	2
6.	Certification – Lobbying Restrictions – Contracts Exceeding \$100,000	4
7.	Access to Records and Reports	11
8.	Civil Rights	11
9.	Cargo Preference – Use of United States Flag Vessels	13
10.	Davis-Bacon and Copeland Anti-Kickback Acts – Contracts Exceeding \$100,000	13
11.	Contract Work Hours and Safety Standards Act - Contracts Exceeding \$100,000	21
12.	Seismic Safety	22
13.	Energy Conservation	22
14.	Clean Water Requirements - Contracts Exceeding \$100,000	22
15.	Clean Air Requirements - Contracts Exceeding \$100,000	23
16.	Fly America	23
17.	Contracts Involving Federal Privacy Act Requirements	23
18.	Preference for Recycled Products	23
19.	Program Fraud and False or Fraudulent Statements or Related Acts	24
20.	Transit Employee Protective Requirements	24
21.	ADA Access Requirements	25

1. INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION TERMS

As used herein, the term “Agreement” shall mean “Contract”. This Agreement is anticipated to be partially funded by the Federal Transit Administration, pursuant to the current version of the “United States of America Department of Transportation Federal Transit Administration – Master Agreement for Lower Manhattan Recovery Grants” (“Master Agreement”).

Anything to the contrary herein notwithstanding, all FTA-mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Contract. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any Authority requests that would cause the Authority to be in violation of the FTA terms and conditions.

Each and every provision required by the FTA to be inserted in this Contract shall be deemed to be inserted herein and the Contract shall be read and enforced as though it were included herein. If any provision of this Contract shall be such as to effect non-compliance with any FTA requirement, such provision shall not be deemed to form part hereof, but the balance of this Contract shall remain in full force and effect.

2. FEDERAL CHANGES

The Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement, as they may be amended or promulgated from time to time during the term of this Contract. Contractor’s failure to so comply shall constitute a material breach of this Contract. The most recent Federal laws, regulations, policies, and administrative practices apply to this Contract at any particular time, unless FTA issues a written determination otherwise. All standards or limits within the Master Agreement are minimum requirements, unless modified by the FTA.

3. NO FEDERAL GOVERNMENT OBLIGATIONS TO THIRD PARTIES

The Authority and the Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this Contract and shall not be subject to any obligations or liabilities to the Authority, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal Assistance provided by the FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

4. ORGANIZATIONAL CONFLICT OF INTEREST

- A. This Contract may give rise to a potential for an organizational conflict of interest. An organizational conflict of interest exists when the nature of the work

Federal Transit Administration Requirements

to be performed under the contract may, without some form of restriction on future activities; result in an unfair competitive advantage to the Contractor.

- 1.) The Contractor shall have access to confidential and/or sensitive Authority information in the course of contract performance. Additionally, the Contractor may be provided access to proprietary information obtained from other contracted entities during contract performance. The Contractor agrees to protect all such information from disclosure unless so authorized, in writing, by the Authority and to refrain from using such information for any purpose other than that for which it was furnished.
 - 2.) To the extent that the Contractor either (a) uses confidential and/or sensitive Authority information or proprietary information obtained from other Authority contractors to develop any form of document, report, or plan that is determined by the Authority to be the basis, in whole or in part, of any subsequent solicitation issued by the Authority or (b) develops written specifications that are used in any subsequent solicitation issued by the Authority, the Contractor agrees that it shall not be eligible to compete for such subsequent solicitation(s) as a prime or principal contractor or as part of any teaming arrangement unless the Authority provides, in writing, a specific waiver of this restriction. The duration of any restriction imposed under this subparagraph shall not exceed the length of the initial performance period of any subsequently awarded contract for which the Contractor was ineligible to compete.
- B. The Contractor, by submitting its bid or proposal, agrees to the above stated conditions and terms and further agrees to perform all duties under the contract and, in doing so, not to enter into contractual agreements with Authority prime contractors and first-tier subcontractors in such a way as to create an organizational conflict of interest.
- C. If the Authority determines that the Contractor has violated any term of this numbered clause, the Authority may take any appropriate action available under the law or regulations to obtain redress to include, but not be limited to, requiring the Contractor to terminate any affiliation or contractual arrangement with an Authority prime contractor or first-tier subcontractor at no cost to the Authority; determining the Contractor ineligible to compete for or be awarded any subsequent or "follow-on" contracts that may be based upon the Contractor's actions under this Contract or violations of this numbered clause, or terminating this Contract, in whole or in part.

5. CERTIFICATION - DEBARMENT AND SUSPENSION

This Contract is a covered transaction for purposes of 2 CFR Parts 180 and 1200. As such, the Contractor is required to verify that none of the Contractor, its principals, as defined at 2 CFR 180.995, or affiliates, as defined at 2 CFR 180.905, are excluded or disqualified as defined at 2 CFR 180.935 and 180.940.

Federal Transit Administration Requirements

The Contractor is required to comply with 2 CFR 180, Subpart C and must include the requirement to comply with 2 CFR 180, Subpart C in any lower tier covered transaction it enters into.

By signing and submitting its bid or proposal, the proposer certifies as follows:

The certification in this clause is a material representation of fact relied upon by the Port Authority of New York and New Jersey. If it is later determined that the proposer knowingly rendered an erroneous certification, in addition to remedies available to the Port Authority of New York and New Jersey, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The proposer agrees to comply with the requirements of 2 CFR 180, Subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

- A. FTA requires that each potential Contractor, for major third party contracts, complete a certification entitled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion" for itself and its principals and requires each Subcontractor or Supplier (for Subcontracts and Supplier agreements expected to equal or exceed \$25,000) to complete a certification entitled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tiered Covered Transactions" for itself and its principals. Copies of the required Certification forms and accompanying instructions are set forth following the clause herein entitled "Integrity Monitor".
- B. In the event that the Contractor has certified prior to award that it is not proposed for debarment, debarred, suspended, or voluntarily excluded from covered transactions by any Federal Department or agency and such certification is found to be false, this Contract may be canceled, terminated or suspended by the Authority and the Contractor will be liable for any and all damages incurred by the Authority because of such cancellation, termination or suspension because of such false certification.
- C. The Contractor shall obtain certifications from all known potential Subcontractors and Suppliers (for which payments are expected to equal or exceed \$25,000) and submit such certifications to the address set forth in E below.
- D. Prior to the award of any Subcontracts or Supplier agreements expected to equal or exceed \$25,000, regardless of tier, any prospective Subcontractor or Supplier who has not previously submitted a certification for this Contract must execute and submit to the Contractor a certification in the form set forth following the clause herein entitled "Integrity Monitor" which will be deemed a part of the resulting Subcontract and Supplier agreement.
- E. The originals of any Certifications or correspondence relating hereto shall be sent by the Contractor to the Director of Procurement, One Madison Avenue, 7th Floor, New York, NY 10010.

Federal Transit Administration Requirements

- F. The Contractor shall not knowingly enter into any Subcontracts or Supplier agreements with a person that is proposed for debarment, debarred, suspended, declared ineligible or voluntarily excluded from covered transactions.
- G. As required by FTA, the Contractor and its Subcontractors or Suppliers required to file the certification have a continuing duty to disclose, and shall provide immediate written notice to the Authority if, at any time, it learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

6. CERTIFICATION - LOBBYING RESTRICTIONS –CONTRACTS EXCEEDING \$100,000

A. Definitions as used in this Clause:

- 1.) "Agency," as defined in 5 U.S.C. 552(f), includes Federal executive departments and agencies as well as independent regulatory commissions and Government corporations, as defined in 31 U.S.C. 9101(1). As used in the Certification set forth following the clause herein entitled "Integrity Monitor" t, it also includes any other public agency.
- 2.) "Covered Federal action" means any of the following Federal actions:
 - a. The awarding of any Federal contract;
 - b. The making of any Federal grant;
 - c. The making of any Federal loan;
 - d. The entering into of any cooperative agreement; and
 - e. The extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement. As used in the above referenced Certification, it includes the award of the contract with which it is associated.
- 3.) "Indian tribe" and "tribal organization" have the meaning provided in Section 4 of the Indian Self Determination and Education Assistance Act (25 U.S.C. 450B). Alaskan natives are included under the definitions of Indian tribes in that Act.
- 4.) "Influencing or attempting to influence" means making, with the intent to influence, any communication to or appearance before an officer or employees of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any covered Federal action.
- 5.) "Local government" means a unit of government in a State and, if chartered, established, or otherwise recognized by a State for the performance of a governmental duty, including a local public authority, a special district, an

Federal Transit Administration Requirements

intrastate district, a council of governments, a sponsor group representative organization, and any other instrumentality of a local government. It also includes a bi-state agency.

- 6.) "Officer or employee of an agency" includes the following individuals who are employed by an agency:
 - a. An individual who is appointed to a position in the Government under title 5, United States Code, including a position under a temporary appointment;
 - b. A member of the uniformed services as defined in section 101(3), title 37, United States Code;
- 7.) A special government employee as defined in Section 202, title 18, United States Code;
 - a. An individual who is a member of a Federal advisory committee, as defined by the Federal Advisory Committee Act, Title 5, United States Code Appendix 2; and
 - b. An employee of a bi-state agency.
- 8.) "Person" means an individual, corporation, company, association, authority, firm, partnership, society, State, and local government, regardless of whether such entity is operated for profit or not for profit. This term excludes an Indian tribe, tribal organization, or any other Indian Organization with respect to expenditures specifically permitted by other Federal law.
- 9.) "Reasonable Compensation" means, with respect to a regularly employed officer or employee of any person, compensation that is consistent with the normal compensation for such officer or employee for work that is not furnished to, not funded by, or not furnished in cooperation with the Federal Government.
- 10.) "Reasonable Payment" means, with respect to professional and other technical services, a payment in an amount that is consistent with the amount normally paid for such services in the private sector.
- 11.) "Recipient" includes all contractors and subcontractors at any tier in connection with a Federal Contract. The term excludes an Indian Tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law.
- 12.) "Regularly Employed" means, with respect to an officer or employee of a person requesting or receiving a Federal Contract, an officer or employee who is employed by such person for at least one hundred and thirty (130) working days within one (1) year immediately preceding the date of the

- 13.) "State" means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, a territory or possession of the United States, an agency or instrumentality of a State, and a multi-state, regional, or interstate entity having governmental duties and powers.

B. Prohibition

- 1.) Section 1352 of Title 31, United States Code provides in part that no appropriated funds may be expended by the recipient of a Federal contract, grant, loan, or cooperative agreement to pay 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 any of the following covered Federal actions: 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. For the purposes of the Certification included herein following the clause entitled "Integrity Monitor", it includes the award of the associated contract.
- 2.) The prohibition does not apply as follows:
- a. Agency and legislative liaison by own employees.
- (i) The prohibition on the use of appropriated funds, in subparagraph B.1.) of this Section, does not apply in the case of a payment of reasonable compensation made to an officer or employee of a person requesting or receiving a Federal contract or the contract associated with the certification if the payment is for agency and legislative liaison activities not directly related to a covered Federal Action.
- (ii) For purposes of subparagraph B. 2.) a.(i) of this Section, providing any information specifically requested by an agency or Congress is allowable at any time.
- (iii) For purposes of subparagraph B. 2.) a.(i) of this Section, the following agency and legislative liaison activities are allowable at any time only where they are not related to specific solicitation for any covered Federal action.

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- (a.) Discussing with an agency (including individual demonstrations) the qualities and characteristics of the person's products or services, conditions or terms of sales and service capabilities; and,
 - (b.) Technical discussions and other activities regarding the application or adaptation of the person's products or services for an agency's use.
 - (iv) For purposes of paragraph B. 2)a.(i) of this Section, the following agency and legislative liaison activities are allowable only where they are prior to formal solicitation of any covered Federal action:
 - (a.) Providing any information not specifically requested but necessary for an agency to make an informed decision about initiation of a covered Federal action;
 - (b.) Technical discussions regarding the preparation of an unsolicited proposal prior to its official submission; and
 - (c.) Capability presentations by persons seeking awards from an agency pursuant to the provisions of the Small Business Act, as amended by Public Law 95-507 and other subsequent amendments.
 - (v) Only those activities expressly authorized by subparagraph B. 2)a. of this Section are allowable under subparagraph B. 2)a.
- b. Professional and Technical Services by Own Employees.
- (i) The prohibition on the use of appropriated funds, in subparagraph B. of this Section, does not apply in the case of a payment of reasonable compensation made to an officer or employee of a person requesting or receiving a Federal contract or an extension, continuation, renewal, amendment, or modification of a Federal contract or the contract associated with the certification if payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that contract or for meeting requirements imposed by or pursuant to law as a condition for receiving that contract.
 - (ii) For purposes of subparagraph B. 2.) b. (i) of this Section, "professional and technical services" shall be limited to advice and analysis directly applying any professional or technical discipline. For example, drafting of a legal document accompanying a bid or

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proposal by a lawyer is allowable. Similarly, technical advice provided by an engineer on the performance or operational capability of a piece of equipment rendered directly in the negotiation of a contract is allowable. However, communications with the intent to influence made by a professional (such as a licensed lawyer) or a technical person (such as a licensed accountant) are not allowable under this Section unless they provided advice and analysis directly applying their professional or technical expertise and unless the advice or analysis is rendered directly and solely in the preparation, submission or negotiation of a covered Federal action. Thus, for example, communications with the intent to influence made by a lawyer that do not provide legal advice or analysis directly and solely related to the legal aspects of his or her client's proposal, but generally advocate one proposal over another are not allowable under this Section because the lawyer is not providing professional legal services. Similarly, communications with the intent to influence made by an engineer providing an engineering analysis prior to the preparation or submission of a bid or proposal are not allowable under this Section since the engineer is providing technical services but not directly in the preparation, submission or negotiation of a covered Federal action.

- (iii) Requirements imposed by or pursuant to law as a condition for receiving a covered Federal award include those required by law or regulation, or reasonably expected to be required by law or regulation, and any other requirements in the actual award documents.
- (iv) Only those services expressly authorized by subparagraph B. 2.) b. this Section are allowable under subparagraph B. 2.) b.

c. **Reporting for Own Employees.**

No reporting is required with respect to payments of reasonable compensation made to regularly employed officers or employees of a person.

d. **Professional and Technical Services by Other than Own Employees.**

- (i) The prohibition on the use of appropriated funds, in subparagraph B. 1.) of this Section, does not apply in the case of any reasonable payment to a person, other than an officer or employee of a person requesting or receiving a covered Federal action, if the payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal contract or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal contract.

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- (ii) For purposes of subparagraph B. 2.) d. (i) of this Section, "professional and technical services" shall be limited to advice and analysis directly applying any professional or technical discipline. For example, drafting of a legal document accompanying a bid or proposal by a lawyer is allowable. Similarly, technical advice provided by an engineer on the performance or operational capability of a piece of equipment rendered directly in the negotiation of a contract is allowable. However, communications with the intent to influence made by a professional (such as a licensed lawyer) or a technical person (such as a licensed accountant) are not allowable under this Section unless they provided advice and analysis directly applying their professional or technical expertise and unless the advice or analysis is rendered directly and solely in the preparation, submission or negotiation of a covered Federal action. Thus, for example, communications with the intent to influence made by a lawyer that do not provide legal advice or analysis directly and solely related to the legal aspects of his or her client's proposal, but generally advocate one proposal over another are not allowable under this Section because the lawyer is not providing professional legal services. Similarly, communications with the intent to influence made by an engineer providing an engineering analysis prior to the preparation or submission of a bid or proposal are not allowable under this Section since the engineer is providing technical services but not directly in the preparation, submission or negotiation of a covered Federal action.
- (iii) Requirements imposed by or pursuant to law as a condition for receiving a covered Federal award include those required by law or regulation, or reasonably expected to be required by law or regulation, and any other requirements in the actual award documents.
- (iv) Persons other than officers or employees of a person requesting or receiving a covered Federal action include consultants and trade associations.
- (v) Only those services expressly authorized by subparagraph B. 2.) d. of this Section are allowable under subparagraph B. 2.) d.

C. Disclosure

- 1.) Each person who requests or receives from the Authority a Contract with Federal assistance shall file with the Authority a certification entitled "Certification Regarding Lobbying Pursuant to 31 U.S.C. 1352," as set forth following the clause herein entitled "Integrity Monitor" that the person has not made, and will not make, any payment prohibited by subparagraph B. of this Clause. Each person who requests or receives from the Authority a

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Contract with Federal assistance shall file with the Authority a disclosure form entitled "Disclosure of Lobbying Activities Pursuant to 31 U.S.C. 1352" (Standard Form-LLL), as set forth following the clause herein entitled "Integrity Monitor", if such person has made or has agreed to make any payment using non-appropriated funds (to include profits from any covered Federal action), which would be prohibited under subparagraph B. of this Clause if paid for with appropriated funds.

- 2.) Each person shall file a disclosure form at the end of each calendar quarter in which there occurs any event that requires disclosure or that materially affects the accuracy of the information contained in any disclosure form previously filed by such person under subparagraph C.2) of this Section. An event that materially affects the accuracy of the information reported includes:
 - a. A cumulative increase of \$25,000 or more in the amount paid or expected to be paid for influencing or attempting to influence a covered Federal action; or
 - b. A change in the person(s) or individual(s) influencing or attempting to influence a covered Federal action; or
 - c. A change in the officer(s), employee(s), or Member(s) contacted to influence or attempt to influence a covered Federal action.
- 3.) Any person who requests or receives from a person referred to in subparagraph C.1) of this Section a subcontract exceeding \$100,000 at any tier under a Federal contract shall file a certification, and a disclosure form, if required, to the next tier above.
- 4.) All disclosure forms, but not certifications, shall be forwarded from tier to tier until received by the person referred to in subparagraph C.1) of this Section. That person shall forward all disclosure forms to the Authority.

D. Agreement

- 1.) In accepting any contract resulting from this solicitation, the person submitting the offer agrees not to make any payment prohibited by this Clause.

E. Penalties

- 1.) Any person who makes an expenditure prohibited under subparagraph A of this Clause shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure.
- 2.) Any person who fails to file or amend the disclosure form to be filed or amended if required by the Clause, shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

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- 3.) Contractors may rely without liability on the representations made by their Subcontractors in the certification and disclosure form.

F. Cost Allowability

Nothing in this Clause is to be interpreted to make allowable or reasonable any costs which would be unallowable or unreasonable in accordance with Part 31 of the Federal Acquisition Regulation. Conversely, costs made specifically unallowable by the requirements in this Clause will not be made allowable under any of the provisions of Part 31 of the Federal Acquisition Regulation.

7. ACCESS TO RECORDS AND REPORTS

The Contractor agrees to provide the Authority, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this Contract for the purposes of making audits, examinations, excerpts and transcriptions. The Contractor also agrees, pursuant to 49 CFR 633.15 to provide the FTA Administrator or his authorized representatives including any PMO Contractor access to the Contractor's records and construction sites pertaining to the project.

The Contractor agrees to provide the Authority, FTA Administrator, the Comptroller General of the United States or any of their duly authorized representatives with access to any books, documents, papers and record of the Contractor which are directly pertinent to this Contract for the purposes of making audits, examinations, excerpts and transcriptions.

The Contractor shall make available records related to the contract to the Authority, the Secretary of Transportation and the Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.

The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

The Contractor agrees to maintain all books, records, accounts and reports required under this Contract for a period of not less than three (3) years after final payment is made by the Authority and all other pending matters are closed, except in the event of litigation or settlement of claims arising from the performance of this Contract, in which case the Contractor agrees to maintain same until the Authority, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto.

This requirement is independent of the Authority's requirements for record retention contained elsewhere in the contract documents.

8. CIVIL RIGHTS

- A. Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975,

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as amended, 42 U.S.C. § 6102, and section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

B. Equal Employment Opportunity - The following equal employment opportunity requirements apply to the underlying contract:

- 1.) Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 *et seq.*, (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. 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. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.
- 2.) Age - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 623, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.
- 3.) Disabilities - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

C. The Contractor also agrees to include these requirements in each subcontract related to this project, modified only if necessary to identify the affected parties.

9. CARGO PREFERENCE - USE OF UNITED STATES FLAG VESSELS

If this Contract involves equipment, materials, or commodities that may be transported by ocean vessels, the Contractor herein agrees:

- A. To utilize privately owned United States-flag commercial vessels to ship at least fifty percent (50%) of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to this Contract, to the extent such vessels are available at fair and reasonable rates for United States-flag commercial vessels.
- B. To furnish within twenty (20) days following the date of loading for shipments originating within the United States or within thirty (30) working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in paragraph (1) above to the FTA Administrator and grantee (through the prime contractor in the case of subcontractor bills-of-lading) and to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20230.
- C. To include these requirements in all subcontracts issued pursuant to this Contract when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.

10. DAVIS-BACON AND COPELAND ANTI-KICKBACK ACTS – CONTRACTS EXCEEDING \$2000

The Davis-Bacon and Copeland Acts are codified at 40 USC 3141, *et seq.* and 18 USC 874. The Acts apply to grantee construction contracts and subcontracts that “at least partly are financed by a loan or grant from the Federal Government.” 40 USC 3145(a), 29 CFR 5.2(h), 49 CFR 18.36(i)(5). The Acts apply to any construction contract over \$2,000. 40 USC 3142(a), 29 CFR 5.5(a). ‘Construction,’ for purposes of the Acts, includes “actual construction, alteration and/or repair, including painting and decorating.” 29 CFR 5.5(a). The requirements of both Acts are incorporated into a single clause (*see* 29 CFR 3.11) enumerated at 29 CFR 5.5(a) and reproduced below and are applicable if this Contract is a construction contract (as delineated above) over \$2000.

- A. Minimum Wages
 - 1.) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), 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 regulations issued 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 equivalents thereof) due at time of payment computed at rates not

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less than those contained in the wage determination of the Secretary of Labor which, if applicable, is attached hereto and made a part hereof (the attachment is the most current determination), regardless of any contractual relationship which may be alleged to exist between the Contractor and such laborers and mechanics. Determinations may change during the term of the Contract, and the wages and fringe benefits required by the most recent determination of the Secretary of Labor are those to be used.

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 (A)(4) 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 classifications and wage rates conformed under paragraph (A)(2) 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 be easily seen by the workers.

2.)

- 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:
 - (i) Except with respect to helpers as defined as 29 CFR 5.2(n)(4), the work to be performed by the classification requested is not performed by a classification in the wage determination;
 - (ii) The classification is utilized in the area by the construction industry;
 - (iii) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination; and
 - (iv) With respect to helpers as defined in 29 CFR 5.2(n)(4), such a classification prevails in the area in which the work is performed.
- 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

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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, DC 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 paragraphs A (2)(ii) (b) or (c) of this Section, 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.
- 3.) 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.
- 4.) 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.
- 5.)
- a. The contracting officer shall require that any class of laborers or mechanics 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 therefor only when the following criteria have been met:

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- (i) The work to be performed by the classification requested is not performed by a classification in the wage determination;
 - (ii) The classification is utilized in the area by the construction industry; and
 - (iii) 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, Washington, DC 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 paragraphs A (2)(ii)(b) or (c) of this Section, 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.

B. Withholding

The Authority 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 the work (or under the United States Housing Act

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of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, the Authority 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.

C. Payrolls and Basic Records

- 1.) 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 (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). 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 section 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 which 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 records which show the costs anticipated or the actual cost 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.
- 2.)
 - a. The Contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the Authority for transmission to the Federal Transit Administration. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under section 5.5(a)(3)(i) of Regulations, 29 CFR part 5. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-00014-1), U.S. Government Printing Office, Washington, DC 20402. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors.
 - 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:

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- (i) That the payroll for the payroll period contains the information required to be maintained under section 5.5(a)(3)(i) of Regulations, 29 CFR part 5 and that such information is correct and complete;
 - (ii) That each laborer or 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;
 - (iii) 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 C(2)(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.
- 3.) The Contractor or subcontractor shall make the records required under paragraph C(1) of this Section available for inspection, copying, or transcription by authorized representatives of the Federal Transit 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.

D. Apprentices and Trainees

- 1.) 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

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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 of the Wage and Hour Division of the U.S. Department of Labor 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.

- 2.) 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 who 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

Federal Transit Administration Requirements

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.

- 3.) 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.

E. 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.

F. Subcontracts

The Contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the Federal Transit 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 5.5.

G. Contract Termination: Debarment

A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

H. 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.

I. 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

Federal Transit Administration Requirements

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.

J. Certification of Eligibility –

- 1.) 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).
- 2.) 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).
- 3.) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

11. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT – CONTRACTS EXCEEDING \$100,000

The Contract Work Hours and Safety Standards Act applies to grantee contracts and subcontracts under 40 USC 3701(b)(1)(B)(iii) and (b)(2), 29 CFR 5.2(h), 49 CFR 18.36(i)(6) for contracts for construction, and non-construction projects that employ “laborers or mechanics on a public work, where the contract amount is greater than \$100,000.

A. 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 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.

B. Violation; liability for unpaid wages; liquidated damages

In the event of any violation of the clause set forth in paragraph A of this Section 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 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 A of this Section, 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 A of this Section.

- C. Withholding for unpaid wages and liquidated damages
The Authority 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 moneys 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 B of this Section.
- D. Subcontracts

The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs A through D of this Section and also a clause requiring the subcontractors 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 A through D of this Section.

12. SEISMIC SAFETY

If this is a contract for the construction of new buildings or additions to existing buildings, the Contractor agrees that any new building or addition to an existing building will be constructed in accordance with standards for Seismic Safety required in Department of Transportation Seismic Safety Regulations 49 CFR Part 41 and will certify compliance to the extent required by the regulation. The Contractor also agrees to ensure that all work performed under this Contract including work performed by a subcontractor is in compliance with the standards required by the Seismic Safety Regulations and the certification of compliance. The completed certification of compliance is to be submitted to the Engineer. The seismic safety standards applicable to this Contract are contained in Section 2312 ICBO Uniform Building Code (UBC), as modified by the Appendix to Title 27, Chapter 1 (Volume 7), of the Administrative Code and Charter of the City of New York at RS 9-6 Earthquake Loads.

13. ENERGY CONSERVATION

The Contractor agrees to comply with the mandatory energy efficiency standards and policies within the applicable State energy conservation plans issued in compliance with the Energy Policy and Conservation Act, 42 U.S.C. §6321 et seq. The Contractor also agrees to ensure that all work performed under this Contract including work performed by a Subcontractor is in compliance with the requirements of this Section.

14. CLEAN WATER REQUIREMENTS – CONTRACTS EXCEEDING \$100,000

- A. The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 USC §1251 et seq.

Federal Transit Administration Requirements

- B. The Contractor agrees to report each violation to the Authority and understands and agrees that the Authority will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.
- C. The Contractor also agrees to include the requirements of this Article in all subcontracts exceeding \$100,000 issued pursuant to this Contract.

15. CLEAN AIR REQUIREMENTS – CONTRACTS EXCEEDING \$100,000

- A. The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 USC §7401 et seq. The Contractor agrees to report each violation to the Authority and understands and agrees that the Authority will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.
- B. The Contractor also agrees to include the requirements of this Clause in all subcontracts exceeding \$100,000 issued pursuant to this Contract.

16. FLY AMERICA

The Federal Government will not participate in the costs of international air transportation of any persons involved in or property acquired for this Contract unless that air transportation is provided by U.S.-flag air carriers to the extent service by U.S.-flag air carriers is available, in accordance with the International Air Transportation Fair Competitive Practices Act of 1974, as amended, 49 U.S.C. § 40118, and with U.S. GSA regulations, "Use of United States Flag Air Carriers," 41 C.F.R. §§ 301-10.131 through 301-10.143.

17. CONTRACTS INVOLVING FEDERAL PRIVACY ACT REQUIREMENTS

The following requirements apply to the Contractor and its employees that administer any system of records on behalf of the Federal Government under any contract:

- A. The Contractor agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. § 552a. Among other things, the Contractor agrees to obtain the express consent of the Federal Government before the Contractor or its employees operate a system of records on behalf of the Federal Government. The Contractor understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract.
- B. The Contractor also agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by FTA.

18. PREFERENCE FOR RECYCLED PRODUCTS

The Contractor agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recover Act (RCRA), as amended (42 U.S.C. 6962), including but not limited to the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247.

19. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS

- A. The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 *et seq.* and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 CFR Part 31, apply to its actions pertaining to this Project. The Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the contract or project. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.
- B. The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under this Contract, financed in whole or in part with Federal assistance, the Federal Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate.
- C. The Contractor agrees to include the above two clauses in each subcontract related to this Contract. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

20. TRANSIT EMPLOYEE PROTECTIVE REQUIREMENTS

To the extent that transit operations are involved, the Contractor agrees to carry out the transit operations work on the underlying contract in compliance with terms and conditions determined by the U.S. Secretary of Labor to be fair and equitable to protect the interests of employees employed under this Contract and to meet the employee protective requirements of 49 U.S.C. A 5333(b), and U.S. DOL guidelines at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in the letter of certification from the U.S. DOL to FTA applicable to the FTA Recipient's project from which Federal assistance is provided to support work on the underlying contract. The Contractor agrees to carry out that work in compliance with the conditions stated in that U.S. DOL letter. The requirements of this subsection (1), however, do not apply to any contract financed with Federal assistance provided by FTA either for projects for elderly individuals and individuals with disabilities authorized by 49 U.S.C. § 5310(a)(2), or for projects for nonurbanized areas authorized by 49 U.S.C. § 5311. Alternate provisions for those projects are set forth in subsections (b) and (c) of this clause.

21. ADA ACCESS REQUIREMENTS

Facilities to be used in public transportation service must comply with 42 U.S.C. Sections 12101 *et seq.* and DOT regulations, “Transportation Services for Individuals with Disabilities (ADA),” 49 CFR Part 37; and Joint ATBCB/DOT regulations, “Americans with Disabilities (ADA) Accessibility Specifications for Transportation Vehicles,” 36 CFR Part 1192 and 49 CFR Part 38.

CERTIFICATION REGARDING LOBBYING PURSUANT TO 31 U.S.C. 1352

The undersigned

(name of authorized officer)

certifies, to the best of my knowledge and belief, that:

- No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, 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 subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients 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, 31, U.S. C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). 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.

Note: Pursuant to 31 U.S.C § 1352(c)(1)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure or failure.

The Contractor certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. § 3801, et seq., apply to this certification and disclosure, if any.

Executed this day _____ of _____, 2009

By: _____
Signature of Authorized Official

Official Name and Title of Authorized Official

STANDARD FORM LLL - DISCLOSURE OF 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 a Subawardee, Enter Name and Address of Prime: Congressional District, if known: _____	
6. Federal Department/Agency: N/A	7. Federal Program Name/Description: N/A CFDA Number, if applicable: _____	
8. Federal Action Number, if known: _____	9. Award Amount, if known: \$ _____	
10. a. Name and Address of Lobbying Registrant (if individual, last name, first name, MI)	b. Individuals Performing Services (including address if different from No.10a): (last name, first name, MI):	

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 such failure.

Signature _____ Print Name _____

Title _____ Telephone No. _____ Date: _____

INSTRUCTIONS FOR COMPLETION OF 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.

1. 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.
2. Identify the status of the covered Federal action.
3. Identify the appropriate classification of this report. If this is a follow-up 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.
4. 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.
5. 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.
6. 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.
7. 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.
8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."
9. 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.
10. (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).
11. 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.

**CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND
VOLUNTARY EXCLUSION - LOWER TIER COVERED TRANSACTIONS**

1. The prospective lower tier participant,

_____, 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 prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.
3. The prospective lower tier participant shall provide immediate written notice to the Authority (and the Contractor, if applicable) if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

Executed this day _____ of _____, _____.

BY SIGNATURE OF AUTHORIZED OFFICIAL

NAME AND TITLE OF AUTHORIZED OFFICIAL

**INSTRUCTIONS FOR COMPLETION OF CERTIFICATION REGARDING
DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION -
LOWER TIER COVERED TRANSACTIONS**

1. By signing and submitting this Proposal, the prospective lower tier participant is providing the signed certification set out on the previous page.
2. This certification is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the Authority may pursue available remedies, including suspension and/or debarment.
3. The prospective lower tier participant shall provide immediate written notice to the Authority if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "persons," "lower tier covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549 [2 CFR Parts 180 and 1200]. The Proposer may contact the Procurement Representative for assistance in obtaining a copy of those regulations.
5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized in writing by the Authority.
6. The prospective lower tier participant further agrees by submitting this proposal that it will include the "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List issued by U.S. General Service Administration.
8. Nothing contained in the foregoing shall be construed to require establishment of system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
9. Except for transactions authorized under sub-paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to all remedies available to the Federal Government, the Authority may pursue available remedies including suspension and/or debarment.

CERTIFICATION REGARDING LOBBYING PURSUANT TO 31 U.S.C. 1352

The undersigned

(name of authorized officer)

certifies, to the best of my knowledge and belief, that:

- No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, 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 subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients 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, 31, U.S. C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). 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.

Note: Pursuant to 31 U.S.C § 1352(c)(I)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure or failure.

The Contractor certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. § 3801, et seq., apply to this certification and disclosure, if any.

Executed this day _____ of _____, 2009

By: _____
Signature of Authorized Official

Official Name and Title of Authorized Official

FTA REQUIREMENTS

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 <i>(including address if different from No. 10a)</i> <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)

FTA REQUIREMENTS

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.

1. 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.
2. Identify the status of the covered Federal action.
3. 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.
4. 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.
5. 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.
6. 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.
7. 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.
8. 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."
9. 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.
10. (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).
11. 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

**CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND
VOLUNTARY EXCLUSION - LOWER TIER COVERED TRANSACTIONS**

1. The prospective lower tier participant,

_____, 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 prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

3. The prospective lower tier participant shall provide immediate written notice to the Authority (and the Contractor, if applicable) if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

Executed this day _____ of _____, 2009 _____.

BY SIGNATURE OF AUTHORIZED OFFICIAL

NAME AND TITLE OF AUTHORIZED OFFICIAL

**INSTRUCTIONS FOR COMPLETION OF CERTIFICATION REGARDING
DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION -
LOWER TIER COVERED TRANSACTIONS**

1. By signing and submitting this Proposal, the prospective lower tier participant is providing the signed certification set out on the previous page.
2. This certification is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the Authority may pursue available remedies, including suspension and/or debarment.
3. The prospective lower tier participant shall provide immediate written notice to the Authority if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The terms “covered transaction,” “debarred,” “suspended,” “ineligible,” “lower tier covered transaction,” “participant,” “persons,” “lower tier covered transaction,” “principal,” “proposal,” and “voluntarily excluded,” as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549 [49 CFR Part 29]. The Proposer may contact the Procurement Representative for assistance in obtaining a copy of those regulations.
5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized in writing by the Authority.
6. The prospective lower tier participant further agrees by submitting this proposal that it will include the “Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction,” without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List issued by U.S. General Service Administration.
8. Nothing contained in the foregoing shall be construed to require establishment of system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
9. Except for transactions authorized under sub-paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to all remedies available to the Federal Government, the Authority may pursue available remedies including suspension and/or debarment.

EXHIBIT B

INSURANCE REQUIREMENTS

COMMERCIAL LIABILITY INSURANCE AND WORKERS' COMPENSATION INSURANCE

A. Commercial Liability Insurance:

- 1) Prior to performance of work at the site, the Consultant shall take out and maintain at his own expense Commercial General Liability Insurance including but not limited to Premises-Operations, Completed Operations and Independent Consultant coverages in limits of not less than \$2,000,000 combined single limit per occurrence for Bodily Injury Liability and Property Damage Liability. And if vehicles are to be used to carry out the performance of this contract, then the Consultant 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 \$2,000,000 combined single limit per accident for bodily injury and property damage. In addition, the policy shall include the Port Authority of New York and New Jersey; Port Authority Trans Hudson Corp. (PATH) and their respective partners, directors, officers, employees, agents and representatives as Additional Insureds (except for Professional Liability) and shall contain a provision that the policy may not be canceled, terminated or modified without thirty (30) days written advance notice to the Director as noted below. Moreover, the Commercial General Liability policy shall not contain any provisions (other than a Professional Liability exclusion, if any) for exclusions from liability other than provisions or exclusions from liability forming part of the most up to date ISO form or its equivalent, unendorsed Commercial General Liability Policy. 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. Furthermore, the Consultant's insurance shall be primary insurance as respects to the above additional insured (s), its representatives, officials, and employees. Any insurance or self insurance maintained by the above additional insured (s) shall not contribute to any loss or claim. These insurance requirements shall be in effect for the duration of the contract to include any warrantee/guarantee period.

Further, the certificate of insurance and the liability Policy (ies) shall be specifically endorsed that “ ***The insurance carrier(s) shall not, without obtaining the express advance permission from the General Counsel of the Port Authority, raise any defense involving in any way the jurisdiction of the tribunal over the person of the Port Authority, the immunity of the Port Authority, its Commissioners, officers, agents or employees, the***

governmental nature of the Port Authority, or the provisions of any statutes respecting suits against the Port Authority”

- 2) Additional Coverages: The Consultant shall have the policy endorsed when required by the Director for specific services hereunder and include the additional premium cost thereof as an out-of-pocket expense:
 - (a) Endorsement to eliminate any exclusions applying to the explosion, collapse, and underground property damage hazards.
 - (b) Endorsement to eliminate any exclusions on account of ownership, maintenance, operation, use, loading or unloading of watercraft.
 - (c) Coverage for work within 50 feet of railroad.

B. Workers' Compensation Insurance:

- 1) The Consultant shall take out and maintain Workers' Compensation Insurance in accordance with the requirements of the law where the work will take place, and Employer's Liability Insurance with limits of not less than \$1,000,000 for each accident
- 2) Additional Coverages: The Consultant shall have the policy endorsed when required by the Director for specific services hereunder and include the additional premium cost thereof as an out-of-pocket expense:
 - a) United States Longshore'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.

C. Professional Liability Insurance – \$2 million, covering acts, errors, mistakes, and omissions arising out of the work or services performed by Consultant, or any person employed by Consultant. Consultant shall require of each and every subconsultant a Professional Liability Policy with a limit of two million dollars (\$2,000,000) available for each claim and annual aggregate and limited contractual liability.

D. Valuable Papers and EDP insurance and records coverage for plans, specifications, drawings, reports, maps, books, blueprints and other printed documents in an amount not less than \$500,000 or the cost of recreating or reconstruction of valuable papers, records and/or EDP files, related to this project, whichever is greater.

Compliance:

Prior to commencement of work at the site, the Consultant shall deliver a certificate from its insurer evidencing policies of the above insurance stating the title of this Agreement, the P. A. Agreement number and containing a separate express statement of compliance with each of the requirements above set forth to the Director.

- 1) Renewal certificates of insurance or policies shall be delivered to the Facility Contract Administrator, Port Authority at least fifteen (15) days prior to the expiration date of each expiring policy. The General Manager, Risk Management 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 Port Authority, the Consultant shall promptly obtain a new and satisfactory certificate and policy.
- 2) 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, if the Manager shall so direct, the Consultant shall suspend performance of the contract at the premises. If the contract is so suspended, no extension of time shall be due on account thereof. If the contract is not suspended (whether or not because of omission of the Manager to order suspension), then the Authority may, at its option, obtain insurance affording coverage equal to the above required, the cost of such insurance to be payable by the Consultant to the Port Authority.
- 3) Upon request of the Manager, Risk Management/Treasury, the Consultant shall furnish to the Authority a certified copy of each policy itself, including the provisions establishing premiums.
- 4) The requirements for insurance procured by the Consultant shall not in any way be construed as a limitation on the nature or extent of the contractual obligations assumed by the Consultant under this contract. 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 Contract.
- 5) All insurance policies shall be procured and maintained by Consultant, at Consultant's expense, in forms and by insurance carriers authorized to do business in the State of New York with a minimum Best's rating of "A- X" or better or with carriers that are acceptable at the discretion of the Owner.