Duffy, Daniel FOI # 13660

From:
Sent: Wednesday, December 26, 2012 4:52 PM
To: Duffy, Daniel
Cc: Torres Rojas, Genara; Van Duyne, Sheree
Subject: Freedom of Information Online Request Form

Information:

First Name: Denise
Last Name: Thomas
Company:
Mailing Address 1:
Mailing Address 2:
City:
State:
Zip Code:
Email Address:
Phone:
Required copies of the records: Yes

List of specific record(s):
A complete copy of the most recent RFP, including the terms and conditions section, requesting proposals andor bids for the provision of Natural Gas to the PA issued by Procurement Department. This RFP would have been issued for bid in AugustSeptember, 2012.

THE PORT AUTHORITY OF NY & NJ

FOI Administrator

January 7, 2013

Ms. Denise Thomas

Re: Freedom of Information Reference No. 13660

Dear Ms. Thomas:

This is a response to your December 26, 2012 request, which has been processed under the Port Authority's Freedom of Information Code (the "Code") for a complete copy of the most recent RFP for the provision of natural gas to the Port Authority.

Material responsive to your request and available under the Code can be found on the Port Authority's website at http://www.panynj.gov/corporate-information/foi/13660-C.pdf. Paper copies of the available records are available upon request.

Please refer to the above FOI reference number in any future correspondence relating to your request.

Very truly yours,

Daniel D. Duffy
FOI Administrator

225 Park Avenue South
New York, , NY 10003
T: 212 435 3642 F: 212 435 7555

THE PORT AUTHORITY OF NY & NJ

PROCUREMENT DEPARTMENT
ATTN: BID/PROPOSAL CUSTODIAN
TWO MONTGOMERY STREET, 3RD FLOOR
JERSEY CITY, NEW JERSEY 07302

REQUEST FOR PREQUALIFICATION INFORMATION

ISSUE DATE: 8-8-12

TITLE: Electric Generation Services at Selected New York and New Jersey Facilities of the Port Authority of New York and New Jersey

SOLICITATION NO.: 30311

SUBMIT INFORMATION NO LATER THAN THE DUE DATE AND TIME TO THE ABOVE ADDRESS

PRE-SUBMITTAL CONFERENCE CALL: AUGUST 21, 2012 TIME: 10:00 A.M.

QUESTIONS DUE: AUGUST 28, 2012 TIME: 2:00 P.M.

PREQUALIFICATION INFORMATION DUE: SEPTEMBER 7, 2012 TIME: 2:00 P.M.

CONTACT: MR. RICHARD A. GREHL

PHONE: (201) 395-3441
EMAIL: rgrehl@panynj.gov

INVITATION FOR BID

- COVER SHEET: BID AND BIDDER INFORMATION
- PART I – STANDARD INFORMATION FOR BIDDERS
- PART II – CONTRACT SPECIFIC INFORMATION FOR BIDDERS
- PART III – CONTRACT SPECIFIC TERMS AND CONDITIONS
- PART IV – SIGNATURE SHEET, NAME AND RESIDENCE OF PRINCIPALS AND AUCTION PRICING
- PART V – SPECIFICATIONS
- STANDARD CONTRACT TERMS AND CONDITIONS

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PART I - STANDARD INFORMATION FOR BIDDERS

1. General Information: The Port Authority of New York and New Jersey

The Port Authority of New York and New Jersey (the "Port Authority" or the "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 and area of about 1,500 square miles in both States, centering about New York Harbor. The Port District includes the Cities of New York and Yonkers in New York State, and the cities of Newark, Jersey City, Bayonne, Hoboken and Elizabeth in the State of New Jersey, and over 200 other municipalities, including all or part of seventeen counties, in the two States. The Port 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 Port Authority 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, and that complex is still owned and being redeveloped partially by the Authority.

2. General Information: Solicitation Process and Schedule

a) Procurement Process

This procurement process will be conducted in two steps for each electric Account Group as set forth in Appendix I.

The two procurement steps shall be as follows:

(1) Statement of Prerequisites – Required For All Prospective Bidders

All Bidders in this procurement process ("Prospective Bidders") shall submit documentation which will be evaluated in accordance with Part II of this Request for Prequalification Information. Prospective Bidders whose submissions are found to be acceptable ("Pre-Qualified Bidders") will be invited to participate in a

"reverse auction" process by means of which the Port Authority will seek to select provider(s) of Electric Generation Service for certain Port Authority Accounts. Prospective Bidders whose information has not met the specified prerequisites will be deemed ineligible to participate in the reverse auction process and will be so notified.

(2) Online Reverse Energy Auction(s) – For Pre-Qualified Bidders Only

The Port Authority is utilizing an internet-based energy auction platform provided by World Energy Solutions, Incorporated, (hereinafter "WES" or "World Energy"), to obtain pricing for this procurement. Pricing will be requested from Pre-Qualified Bidders through online reverse energy auction(s) conducted by WES. Notification of Contract award will be issued as set forth in Section 8, below. The Port Authority reserves the right to award a Contract for none, some or all of the Account Groups and to award separate Contracts for each of the Account Groups to different Bidders or to award a Contract covering more than one Account Group to a particular Bidder.

b) Procurement Schedule

PROCUREMENT SCHEDULE[1]	
DATE	**MILESTONE**
8/7/2012	Solicitation Advertised
8/21/2012	Prospective Bidder Conference Call
8/28/2012	**Last Day to Submit Bidder Questions**
8/31/2012	Post Questions and Answers
9/07/2012	**Statement of Prerequisites Due**
9/14/2012	Pre-Qualification Notifications Issued
9/18/2012	**Online Reverse Electricity Auction(s)**

3. Form and Submission of Statement of Prerequisites (Pre-Qualification)

All Bidders shall review carefully every provision of this document, provide all the information required, and sign and return one entire original copy with three (3) additional copies to the Port Authority in accordance with the instructions on the Cover Sheet and Part II – Contract Specific Information for Bidders. The Bidder should retain one complete duplicate copy for its own use. The "Signature Sheet" contained in Part IV herein must be completed and signed by the Bidder. The Statement of Prerequisites shall be sealed in an envelope conspicuously marked with the Bidder's name, address, and Port Authority Vendor Number, if available. In addition, the outside of the package must clearly state the Solicitation Title, the Solicitation Number and the Solicitation Due Date. Failure to properly label submissions may cause a delay in identification, misdirection or disqualification of the submissions. In submitting a response to this solicitation, the Bidder thereby

[1] This schedule may be subject to change. Changes to this solicitation will be posted at Hhttp://www.panynj.gov/business-opportunities/bid-proposal-advertisements.htmlH under the solicitation number listed on the Cover Sheet for this Request for Prequalification Information.

assumes the obligations and liabilities imposed upon it herein and expressly makes the representations and warranties required in this document.

All Statements of Prerequisites must be received on or before the due date and time specified on the Cover Sheet. Submissions are only accepted Monday through Friday, excluding Port Authority holidays, between the hours of 8:00 a.m. and 5:00 p.m., via (1) regular mail, (2) express delivery service (e.g. UPS), or (3) hand delivery. If your submission is to be hand-delivered by messenger, please note that only individuals with valid photo identification will be permitted access to Port Authority offices. Individuals without valid identification shall be turned away and their packages shall not be accepted. Submissions not received by the bid custodian in accordance with the scheduled Statement of Prerequisites submission deadline outlined above shall be considered late.

4. Form and Submission of Bid

The Port Authority is utilizing an internet-based energy auction platform provided by WES to obtain pricing for this procurement. All prices submitted by a Bidder through the WES transaction platform shall be in accordance with the provisions of this Request for Prequalification Information. Alternate bids (bids on terms or conditions different from those established by this solicitation) are not permitted.

Auction participation will be limited to Pre-Qualified Bidders only. Bidders will be required to register and execute a member agreement with WES prior to the auction(s) and shall participate in the auction events in accordance with the terms and conditions of that agreement and this solicitation.

It shall be the express responsibility of the Pre-Qualified Bidder to understand both the rules and the mechanics of the WES auction platform. Upon request, a demonstration reverse auction will be provided to assist Pre-Qualified Bidder(s).

5. Vendor Profile

It is vitally important that Bidders keep their vendor profiles up to date with an appropriate e-mail address, as this will enable Bidders to receive timely notice of advertisements, reminders, solicitations and Addenda. Bidders may update their vendor profile or register as a Port Authority Vendor by accessing the online registration system at https://panynjprocure.com/VenLogon.asp.

6. Acknowledgment of Addenda

If any Addenda are posted or sent as part of this solicitation, the Bidder shall complete, sign and include the Addenda with its response to this solicitation in the manner set forth in section 3, above. In the event any Bidder fails to conform to these instructions, its response to this solicitation will nevertheless be construed as though the Addenda had been acknowledged.

If the Bidder downloads this solicitation document, it is the responsibility of the Bidder to periodically check the Port Authority website at http://www.panynj.gov/business-opportunities/bid-proposal-advertisements.html and

download any Addenda that might have been issued in connection with this solicitation.

7. Firm Offer

The Bidder offers to provide the Port Authority specified commodities in connection therewith required under this Contract, all as specified by the terms and conditions of the Contract, based on the prices which shall be submitted through the WES auction platform.

EXCEPTIONS TAKEN OR CONDITIONS IMPOSED BY A BIDDER TO ANY PORTION OF THE CONTRACT DOCUMENTS SHALL RESULT IN REJECTION OF THE BID.

8. Acceptance or Rejection of Bids

The acceptance of a bid will be by an electronic notice of award to the selected bidder by an authorized representative on behalf of the Port Authority. The Port Authority is acting as agent for Port Authority Trans-Hudson Corporation (PATH) in connection with any PATH Accounts included in this Request for Prequalification Information. The selected Bidder will receive a notice of award e-mail within two hours of auction close and no later than 3:00 P.M. Eastern Time on the day of the auction(s) and such notice of award shall be considered official and binding. This notice shall include the date of award, the duration of Contract, the Commencement Date, the Expiration Date, a list of the Accounts awarded, and pricing for each Account. A written confirmation of the award, signed by the Port Authority, will be faxed and mailed to the selected Bidder(s) within 48 hours of award.

No other act of the Port Authority, its Commissioners, officers, agents or employees shall constitute acceptance of a bid. The Port Authority reserves the unqualified right, in its sole and absolute discretion, to reject any or all bids or to accept any bid that in its judgment will best serve the public interest and to waive defects in any bid. No rights accrue to any Bidder unless and until its bid is accepted.

9. Prospective Bidder's Questions

Any questions by Prospective Bidders concerning the commodity to be supplied or the terms and conditions of the Contract may be addressed to the Contract Specialist listed on the Cover Sheet of this document. The Contract Specialist is authorized only to direct the attention of Prospective Bidders to the relevant or applicable portions of the Contract. No employee of the Port Authority is authorized to interpret any portion of the Contract or to give information in addition to that contained in the Contract. When Contract interpretation or additional information as to the Contract requirements is deemed necessary by the Port Authority, it will be communicated to all Bidders by written Addenda and shall be posted on the Port Authority website. Prospective Bidders must submit such questions or concerns no later than the Questions Due Date noted on the Cover Sheet of this Invitation for Bid. The Port Authority may answer these questions, and disseminate all answers within a reasonable time period to all Prospective Bidders via Addenda, which shall be considered part of the Contract.

10. Additional Information To and From Bidders

Should the Authority require additional information from the Bidder in connection with its bid, such information shall be submitted within the timeframe specified by the Port Authority.

If the Bidder is a corporation, a partnership, or a joint venture, a statement of the names and residences of its officers, partners, or authorized representatives, as applicable, should be submitted on the "Name and Residence of Principals Sheet," directly following the Signature Sheet in Part IV.

11. Assessment of Bid Requirements

The Bidder should carefully examine and study the entire contents of these bid documents and shall make its own determinations as to the commodity to be supplied and all other things required to be done by the Contractor based upon its examination and study of the bid documents.

12. Bidder's Prerequisites

Only Bidders who can comply with the prerequisites specified below and in Part II hereof at the time of the submission of their bid should submit bids, as only the prequalification statements submitted by such Bidders in compliance with the prerequisites will be considered. By furnishing this Request for Prequalification Information document to the Bidder, the Port Authority has not made a determination that the Bidder has met the prerequisites or has otherwise been deemed qualified to provide the commodity. A determination that a Bidder has met the prerequisites is no assurance that it will be deemed qualified in connection with other bid requirements included herein.

13. Qualification Information

Prior to participation in a reverse auction, the Port Authority requests the Bidder to furnish the Port Authority with a Statement of Prerequisites. Please refer to Part II – "Specific Bidder's Prerequisites (Statement of Prerequisites)" for instructions. Requested information shall be submitted in accordance with Section 3 of this Part I: "Form and Submission of Statement of Prerequisites (Pre-Qualification)." In addition, the Port Authority may give written or oral notice to the Bidder to furnish the Port Authority with information and to meet with designated representatives of the Port Authority relating to the Bidder's qualifications and ability to fulfill the Contractor's obligations hereunder. Matters upon which the Port Authority may inquire may include, but may not be limited to, the following:

a. The Bidder will be required to demonstrate that it is financially capable of performing this Contract, and the determination of the Bidder's financial qualifications will be made by the Port Authority in its sole discretion. The Bidder shall submit such financial and other relevant information as may be

required by the Port Authority from time to time including, but not limited to, the following:

1. (i) Certified financial statements, including applicable notes, reflecting the Bidder's assets, liabilities, net worth, revenues, expenses, profit or loss and cash flow for the most recent calendar year or the Bidder's most recent fiscal year.

   (ii) Where the certified financial statements set forth in (i) above are not available, then either reviewed or compiled statements from an independent accountant setting forth the aforementioned information shall be provided.

   (iii) Where neither certified financial statements nor financial statements from an independent accountant are available, as set forth in (i) and (ii) above, then financial statements containing such information prepared directly by the Bidder may be submitted; such financial statements, however, must be accompanied by a signed copy of the Bidder's most recent Federal income tax return and a statement in writing from the Bidder, signed by an executive officer or their authorized designee, that such statements accurately reflect the current financial condition of the Bidder.

If the statements submitted pursuant to subparagraphs (i), (ii) or (iii) are dated more than forty-five (45) days prior to the Statement of Prerequisites due date, then the Bidder shall submit a statement in writing, signed by an executive officer of the Bidder or its designee, that the present financial condition of the Bidder is at least as good as that shown on the statements submitted.

2. A statement from the Bidder of work on hand, (including any work on which a bid has been submitted), which sets forth a description of the work, the annual dollar value of the work, the location of the work by city and state, the current percentage of completion of the work, the expected date for completion of the work, and the name of an individual most familiar with the Bidder's performance of the work on these jobs.

3. The name and address of the Bidder's banking institution, the Bidder’s chief banking representative handling its account, the Bidder's Federal Employer Identification Number (i.e., the number assigned to firms by the Federal Government for tax purposes), the Bidder's Dun and Bradstreet number, if any, the name of any other credit service to which the Bidder has furnished information, and the number, if any, assigned by such service to the Bidder's account.

b. Information relating to the Bidder's Statement of Prequalification.

c. If the Bidder is a corporation: (1) a copy of its Certificate of Incorporation and, if applicable, all Amendments thereto with a written declaration signed by the Secretary of the Corporation with the corporate seal affixed thereto, stating that the copy furnished is a true copy of the Certificate of Incorporation and any such Amendments as of the date of the opening of the bid and (2) if the Bidder is not incorporated under the laws of the state in which the service is to be

performed, a certificate from the Secretary of State of said state evidencing the Bidder's legal qualification to do business in that state.

d. A statement describing the legal and financial form of the entity submitting the bid, including ownership, financial structure and a point of contact. Such entity must legally exist and be qualified to do business within the state required under this bid as of the date that its bids are submitted. As applicable, provide copies of the Articles or Certificate of Incorporation, By laws and all amendments, partnership agreement, joint venture agreement and/or other appropriate organizational documents for the Bidder, its officers, financial guarantors and, if any such entities are joint ventures or partnerships, for all ventures or partners. The Bidder’s statement shall further describe a rationale for the selection of the structure of the entity as well as a description of all contractual, financial, legal commitments and agreements and functional relationships among financial guarantors and officers with relation to the Work required by this bid, to the extent that they are not disclosed in the organizational documents.

e. A statement setting forth the names of those personnel to be in overall charge of the commodity and those who would be exclusively assigned to supervise the service and their specific roles therein, setting forth as to each the number of years of experience and in which functions and capacities each would serve.

f. Information to supplement any statement submitted in accordance with the Standard Contract Terms and Conditions entitled "Contractor's Integrity Provisions."

g. In the event that the Bidder's performance on a current or past Port Authority or Port Authority Trans-Hudson Corporation (PATH) contract or contracts has been rated less than satisfactory, the Manager, Purchasing Services Division, may give oral or written notice to the Bidder to furnish information demonstrating to the satisfaction of such Manager that, notwithstanding such rating, such performance was in fact satisfactory or that the circumstances which gave rise to such unsatisfactory rating have changed or will not apply to performance of this Contract, and that such performance will be satisfactory.

h. The Bidder recognizes that it may be required to demonstrate to the satisfaction of the Port Authority that it in fact can provide for the commodity called for in this Contract and that it may be required to substantiate the warranties and representations set forth herein and the statements and assurances it may be required to give.

i. The Bidder must also submit the contact person, company name, account size, and phone number, of at least four (4) references, preferably from the public sector, one of which should be similar in scope to the Port Authority, for which the Bidder has provided competitive energy supply. The Port Authority reserves the right to verify a Prospective Bidder’s experience and references.

Neither the giving of any of the aforesaid notices to a Bidder, the submission of materials by a Bidder, any meeting which the Bidder may have with the Port Authority, nor anything stated by the Port Authority in any such meeting shall be construed or alleged to be construed as an acceptance of said Bidder's bid. Nothing

stated in any such meeting shall be deemed to release any Bidder from its offer as contained in the bid.

14. Available Documents - General

Certain documents, listed in Part II hereof, will be made available for reference and examination by Bidders during regular business hours. Arrangements to review these documents done in accordance with instructions in Section 12 of Part II ("Available Documents").

The Port Authority makes no representations or guarantees as to, and shall not be responsible for, their accuracy, completeness or pertinence, and, in addition, shall not be responsible for the inferences or conclusions to be drawn therefrom, except for the purpose of setting the Maximum Monthly Consumption Amount and the Minimum Monthly Consumption Amount, as each is defined in Part V.

15. Pre-Commencement Meeting

The lowest qualified Bidder may be called for a meeting prior to the commencement of the Contract.

16. Good Faith Participation

The Bidder/Contractor shall use every good-faith effort to provide for meaningful participation by certified Minority Business Enterprises (MBEs) and certified Women-owned Business Enterprises (WBEs) as defined in the Standard Contract Terms and Conditions, in all purchasing, subcontracting and ancillary service opportunities associated with this Contract, including purchase of equipment, supplies and labor services.

Good Faith efforts to include participation by MBEs/WBEs shall include the following:

a. Dividing the services and materials to be procured into small portions, where feasible.

b. Giving reasonable advance notice of specific contracting, subcontracting and purchasing opportunities to such MBEs/WBEs as may be appropriate.

c. Soliciting services and materials, to be procured, from the Directory of MBEs/WBEs, a copy of which can be obtained on the Port Authority Website at http://www.panynj.gov/business-opportunities/supplier-diversity.html or by contacting the Port Authority's Office of Business Diversity and Civil Rights at (212) 435-7819 or seeking MBEs/WBEs from other sources.

d. Ensuring that provision is made to provide progress payments to MBEs/WBEs on a timely basis.

17. Additional Bidder Information

Prospective Bidders are advised that additional vendor information, including but not limited to, forms, documents and other information, including protest procedures, may be found on the Port Authority website at: http://www.panynj.gov/business-opportunities/become-vendor.html

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PART II - CONTRACT SPECIFIC INFORMATION FOR BIDDERS

The following information may be referred to in other parts hereof, or further detailed in other parts hereof, if applicable.

1. **Service(s) Required**

   Electric Generation Service to serve selected electricity accounts of The Port Authority of New York and New Jersey

2. **Location(s) Services Required**

   Electric Generation Service at selected Port Authority Facilities in New York and New Jersey, set forth in Part V - Specifications and Appendix I, hereof

3. **Expected Date of Commencement of Contract**

   On or after November 1, 2012

4. **Contract Type**

   Electric Generation Service Contract

5. **Duration of Contract**

   The length of the initial term of the Contract, excluding any Option Period(s), ("Base Term") will be determined on the day of the auction and stated on the World Energy Solutions, Incorporated, (hereinafter "WES" or "World Energy"), energy auction platform during auction operation. The Port Authority may request Bids for contract lengths varying from 12 to 48 months for each Account Group in Appendix I.

6. **Price Adjustment during Base Term (Index Based)**

   Not Applicable

7. **Option Period(s)**

   Two (2) option periods covering up to two (2) account Meter Read Dates each, applicable, in each case, upon price agreement by the Port Authority and the Contractor.

8. **Extension Period**

   Not Applicable

9. **Pre-submittal Conference Call**

   A Bidders Teleconference will be held from 10:00AM until 12:00PM Eastern Time on AUGUST 21, 2012.

   This conference call is open to all Prospective Bidders. Conference participation is optional; no advance registration is required. Please call (888) 807-5706 and enter the code: "752358#"to participate.

10. Specific Bidder's Prerequisites

All Bidders shall be pre-qualified in advance of the internet-based reverse auction process and bid award. Bidder pre-qualification will be granted to Prospective Bidders that submit documentation which demonstrates to the Port Authority, in its sole discretion, that Bidders satisfy the following prerequisites in addition to the information that may be requested pursuant to Part I, Section 13 hereof:

a. The Bidder shall have had at least two (2) year(s) of continuous experience immediately prior to the date of submission of its bid in the management and operation of providing electric generation service to commercial and/or industrial retail electric loads anywhere in the United States under contracts totaling at least 100 million kWh (as defined in Part V hereof) and during that time shall have actually engaged in providing said or such services to commercial or industrial accounts under contract. The Bidder may fulfill this prerequisite if the Bidder can demonstrate to the satisfaction of the Port Authority that the persons or entities owning and controlling the Bidder have had a cumulative total of at least two (2) year(s) of experience immediately prior to the date of the submission of its bid in the management and operation of a business actually engaged in providing these services to commercial or industrial accounts under contract during that time, or have owned and controlled other entities which have actually engaged in providing the above described services during that time period.

b. During the time period stated in (a) above, the Bidder, or persons or entities owning and controlling the Bidder, shall have performed or is currently performing under at least one (1) contract supplying electricity as required under this Contract.

c. In the event a bid is submitted by a joint venture the foregoing prerequisites will be considered with respect to such bid as follows: The prerequisites in subparagraphs (a) and (b) above, will be considered satisfied if the joint venture itself, or any of its participants individually, can meet the requirements. If a joint venture which has not been established as a distinct legal entity submits a bid, it and all participants in the joint venture shall be bound jointly and severally and each such participant in the joint venture shall execute the bid and do each act and thing required by this Invitation for Bid. On the original bid and wherever else the Bidder's name would appear, the name of the joint venture Bidder should appear if the joint venture is a distinct legal entity. If the Bidder is a common law joint venture, the names of all participants shall be listed followed by the words "acting jointly and severally." All joint venture Bidders must provide documentation of their legal status.

d. The Bidder shall possess and demonstrate all applicable retail supplier licenses, and shall be in compliance with all applicable state and federal laws, regulations and standards applicable to providers of Electric Generation Service as follows:

For Bidders serving New York Electric Accounts:
Bidders serving electric accounts in the State of New York must possess a current retail supplier license issued by the New York State Public Service Commission (NYPSC).

For Bidders serving New Jersey Electric Accounts:
Bidders serving electric accounts in the State of New Jersey must possess a current retail supplier license issued by the New Jersey Board of Public Utilities (NJBPU).

e. All Bidders shall submit a statement certifying compliance with Electronic Distribution Company requirements and retail access tariff and program rules, including Electronic Data Information (as defined in Part V hereof).

f. All Bidders must complete and return Part IV of this solicitation

Proof that the above prerequisites are met should be submitted with the prequalification information.

11. Bidder's Additional Submittal Requirements

Not Applicable

12. Available Documents

The following will be made available for reference and examination:

(i) Appendix I: The Port Authority of New York and New Jersey 2012 Data Exhibit. This document will be made available to Prospective Bidders upon request.

Please call 212.435.5463, Monday through Friday, between the hours of 8:00 a.m. and 5:00 p.m., to request the available documents listed above.

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PART III – CONTRACT SPECIFIC TERMS AND CONDITIONS

1. General Agreement

Subject to all of the terms and conditions of this Contract, the undersigned (hereinafter called the "Contractor") hereby offers and agrees to provide all the necessary supervision, personnel, equipment, materials and all other things necessary to perform the Work required by this Contract as fully set forth in Part V ("Specifications") and do all other things necessary or proper therefore or incidental thereto, all in strict accordance with the provisions of the Contract documents and any future changes therein; and the Contractor further agrees to assume and perform all other duties and obligations imposed upon it by this Contract.

In addition, all things not expressly mentioned in the Specifications but involved in carrying out their intent and in the complete and proper execution of the matters referred to in and required by this Contract are required as though specifically set forth in the Specifications, and the Contractor shall perform the same as though they were specifically delineated, described and mentioned therein.

2. Duration

a) The initial term of this Contract, excluding any Option Period(s), (hereinafter called the "Base Term"), shall commence on or about the date specified in Part II hereof, on the specific date set forth in the Port Authority's notice of Contract award (hereinafter called the "Commencement Date"), and unless otherwise terminated, revoked or extended in accordance with the provisions hereof, shall expire as specified in the Port Authority's notice of Contract award (hereinafter called the "Expiration Date").

b) If specified as applicable to this Contract and set forth in Part II hereof, the Port Authority shall have the right to extend this Contract for additional period(s) (hereinafter referred to as the "Option Period(s)") following the Expiration Date, If the Port Authority shall elect to exercise the Option(s) to extend this Contract, then, no later than thirty (30) days prior to the Expiration Date, the Port Authority shall send a notice that it is extending the Base Term of this Contract, and this Contract shall thereupon be extended for the applicable Option Period. If the Contract provides for more than one Option Period, the same procedure shall apply with regard to extending the term of this Contract for succeeding Option Periods.

3. Billing

a) The Contractor(s) shall be required to prepare and submit to the Port Authority a single monthly billing invoice ("Summary Billing") for each Account Group covered by the Contract awarded under this bid. Each such monthly Summary Billing invoice shall list separately each of the individual accounts included within each of the Account Group covered by the Contract and shall provide the number of kilowatt-hours of usage and the appropriate unit prices for each such

account. The Contractor shall forward an original invoice by mail and one electronic copy of said invoice by e-mail to the Port Authority as follows:

(i) One original copy by mail to:
Office of Environmental and Energy Programs
The Port Authority of New York and New Jersey
225 Park Avenue South, 11th Floor
New York, New York 10003

(ii) One electronic copy by mail to: (email address(s) will be provided upon contract award)

b) The Contractor shall submit within 45 days of the first meter reading date of each month following the month of commencement of this Contract and thereafter (including the month following the termination, revocation or expiration of this Contract) a complete and correct invoice for the Work performed during the preceding month accompanied by such information as may be required by the Manager for verification. Each invoice submitted pursuant to this Contract must show the Contractor's Federal Tax Identification Number. Payment will be made within thirty (30) days of Port Authority verification of the invoice.

c) The Contractor shall forward to the Port Authority by regular mail original invoices for the Electric Generation Service provided and shall also e-mail electronic copies of said invoices to the Port Authority.

d) Dual-bill option: The Port Authority has elected to receive, and Contractor(s) must provide, a separate billing statement (invoice) for Electric Generation Service, only, strictly in accordance with the provisions of this Section 3. Such invoice shall not include any charges for distribution, transmission or other EDC charges. The Contractor(s) must notify the EDC with adequate advance notice of the dual-bill choice by the Port Authority so as not to jeopardize any switchover deadlines.

e) In consideration of the commodity provided by Contractor(s) pursuant to this Contract, the Port Authority agrees to pay the Contractor(s) the unit price bid by the Contractor(s) for the Account Group(s) covered by the awarded Contract, multiplied by the actual kWh usage for the accounts included within the Account group(s) during each Billing Period.

f) The quantities of electricity set forth in the Electric Generation Service invoices rendered by the Contractor applicable to any Billing Period shall be final and conclusive, subject to the provisions of Section 4, including but not limited to subparagraphs 4(d), 4(e), and 4(f) below, for purposes of computing the Port Authority's payments to the Contractor pursuant to this Paragraph 3.

g) The Contractor(s) will be responsible for all costs, including, but not limited to, applicable taxes associated with the supply of Electric Generation Service. In no event shall the Contractor(s) adjust the amounts it charges the Port Authority or

assess any additional charges based on any additional unforeseen or unanticipated costs it may incur, except for changes in the applicable State Sales and Use Tax that become effective during the term of the Contract. In addition, if after the Port Authority has notified Contractor that it is the winning Bidder for particular Port Authority Account(s) or Account Groups but prior to the Commencement Date of this Contract, a new Law, as defined below, shall be enacted, or there shall occur any amendments to any Law (including without limitation those that establish new or otherwise modify existing and alternative resource adequacy requirements or renewable portfolio standards or that impose new taxes or change the rate of existing taxes), in either circumstance affecting approved rates, tariffs, taxes, charges, fees, assessments, or other costs relating to the licensing, supply, generation, transmission or distribution of electric power and/or energy directly affecting the anticipated economic return to Contractor of supplying electricity to the Port Authority under this Contract (any of the foregoing a "Change in Law"), Contractor shall send a written notice to the Port Authority at least thirty (30) days prior to the implementation of the Change in Law explaining how such Change in Law will directly affect the cost of supplying electricity to the Port Authority under this Contract and including an explanation of its calculation of how such Change in Law would affect amounts payable by the Port Authority to the Contractor under this Contract. In such written notice to the Port Authority, the Contractor shall explain Contractor's calculation of how Contractor's costs will actually increase or decrease under this Contract, as applicable, as a result of such Change in Law. If the Port Authority agrees, in its sole discretion, that such Change in Law will directly affect Contractor's cost of supplying electricity to the Port Authority under this Contract, the Port Authority will confirm same by written notice to the Contractor within a reasonable time period and will set forth therein its determination of a monetary figure that the Port Authority believes takes into account the changed economic consequences resulting from such Change in Law; the amounts payable by the Port Authority shall be accordingly adjusted upward or downward to take into account such changed economic consequences, and such Port Authority approved amounts shall be included in subsequent invoices. In the case of downward adjustments, the Port Authority will be granted a credit against amounts owed to Contractor under future monthly invoices, or shall be issued a refund if no future monthly payments by the Port Authority are payable. For purposes of this paragraph only, "Law" shall mean any law, rule, regulation, ordinance, statute, judicial decision, administrative order, applicable EDC operating guideline or protocol, utility or applicable EDC tariff, rule of the public utilities commission, public service commission or similar state commission or agency having jurisdiction over utilities and the electricity distribution system of the state in which the Account(s) are located, and the like.

h) The Contract price for Electric Generation Service shall include all charges associated with purchase and transportation of the Electric Generation Service to the specified interconnection, including all applicable taxes. Invoices shall be

based on usage as measured by the Electric Distribution Company (EDC) at the Port Authority's meters, not the quantities delivered by the Contractor to the specified interconnection.

i) In addition, in the event the Port Authority chooses a product that does not fix a firm price (Firm, Fixed Price) for the term of the Contract for the energy component of Electric Generation Service, the Port Authority shall retain the option to convert the Contract at any time to a Firm, Fixed Price for the remaining term of the Contract at a price that is subject to mutual agreement and reflective of then-current market conditions. The Contractor(s) shall use reasonable efforts to monitor market conditions and to have its designated representative regularly advise the designated Port Authority representative of market events or conditions in order to assist the Port Authority in identifying opportunities to convert a floating price Contract to a fixed price basis.

j) Monthly Electronic Summary Report: Contractor(s) shall provide the Port Authority and WES with a monthly, digital electric consumption summary containing the following information by account number: service start date, service end date, total consumption, and total charges. The monthly digital summary must adhere to the "World Energy Payment Instructions" documents posted at https://www.wesplatform.com/webportal/Public/Announcement.aspx?ID=E4N88dGL2vo%3d

The summary will be in a Microsoft Excel spreadsheet template and accompany each invoice. Receipt of the summary report is a prerequisite to payment of the relevant invoice by the Port Authority.

4. Payment

Subject to the provisions of this Contract, the Port Authority agrees to pay to the Contractor and the Contractor agrees to accept from the Port Authority as full and complete consideration for the performance of all its obligations under this Contract and as sole compensation for the Work performed by the Contractor hereunder a compensation calculated in accordance with the Port Authority's notice of Contract award. The manner of submission of all bills for payment to the Contractor by the Port Authority for Services rendered under this Contract shall be in accordance with Section 3, above, and shall be subject to the approval of the Manager in all respects, including, but not limited to, format, breakdown of items presented and verifying records. All computations made by the Contractor and all billing and billing procedures shall be done in conformance with the following procedures:

a) Payment shall be made in accordance with the prices for the applicable service (during the applicable Contract year) in accordance with the Port Authority's notice of Contract award, as the prices may be adjusted from time to time as specified herein, minus any deductions for services not performed and/or any liquidated damages to which the invoice may be subject and/or any adjustments as may be required pursuant to increases and decreases in areas or frequencies, if applicable. All Work must be completed within the time frames specified or as designated by the Manager.

b) No certificate, payment, acceptance of any Work or any other act or omission of any representative of the Port Authority shall operate to release the Contractor from any obligation under or upon this Contract, or to stop the Port Authority from showing at any time that such certificate, payment, acceptance, act or omission was incorrect or to preclude the Port Authority from recovering any monies paid in excess of those lawfully due and any damage sustained by the Port Authority.

c) The parties shall retain all billing and other records for a period of three (3) years following the expiration of the term of the Contract so as to permit either party to confirm the validity of payments due or made; provided, however, that if either party disputes the validity of any payments within one year of the expiration of the term of this Contract, then notwithstanding Section 17 of the Standard Contract Terms and Conditions, the parties will retain all records related to the dispute until it is finally resolved.

d) A party may, in good faith, dispute the correctness of any invoice or any adjustment to an invoice provided under this Contract or adjust any invoice for errors within twelve (12) months from the date of the invoice or adjustment. Any invoice dispute or adjustment shall be in writing and shall state the basis for the dispute or adjustment. Payment of the disputed amount shall not be required until the dispute is resolved. Upon resolution of the dispute, any required payment shall be made within ten (10) business days of such resolution.

e) In the event an audit of received invoices should indicate that the correct sum due the Contractor for the relevant Billing Period is less than the amount actually paid by the Port Authority, the Contractor shall pay to the Port Authority the difference promptly upon receipt of the Port Authority's statement thereof. The Port Authority may, however, in its discretion elect to deduct said sum or sums from any subsequent monthly payments payable to the Contractor hereunder.

f) In the event of a dispute regarding any invoice issued or payment due under this Contract, each party shall have the right to verify, at its sole expense, the accuracy of the invoice or the calculation of the payment due by obtaining copies of relevant portions of the books and records of the other party. This right of verification will survive the termination of this Contract for a period of one year after termination.

"Final Payment," as the term is used throughout this Contract, shall mean the final payment made for services rendered in the last month of the Base Term or any extended term. However should this Contract be terminated for any reason prior to the last month of the Base Term or any extended term, then Final Payment shall be the payment made for services rendered in the month during which such termination becomes effective. The Contractor's acceptance of Final Payment shall act as a full and complete release to the Port Authority of all claims of and of all liability to the Contractor for all things done or furnished in connection with this Contract and for every act and neglect of the Port Authority and others relating to or arising out of this Contract, including claims arising out of breach of contract and claims based on claims of third persons. No payment,

however, final or otherwise shall operate to release the Contractor from any obligations in connection with this Contract.

5. Price Adjustment

None

6. Contractor Performance

a) Contractor(s) shall deliver the Electric Generation Service on a firm basis to the EDC's transmission grid without interruption at all times throughout the Contract term, subject only to an event of Force Majeure.

b) All Electric Generation Service provided by Contractor(s) under this Contract shall meet all licensing requirements, standards, and regulations of the applicable state licensing agency (NYPSC and/or NJBPU), the Federal Energy Regulatory Commission (FERC) and EDC specifications and State laws, particularly as they relate to providing Electric Generation Service to the Port Authority.

c) Contractor(s) shall ensure that all arrangements with the EDC have been completed within prescribed time periods to commence delivery on the Start Date, including the completion of required paperwork, coordination of information systems, coordination of operations and ability to communicate electronically, including EDI compliance, if needed. Contractor(s) is not responsible for delays attributable to the acts or omissions of the EDC.

d) The Manager shall determine whether the Contractor has performed in a satisfactory manner, and this determination shall be final, binding and conclusive upon the Contractor.

e) Failure of the Manager or the Port Authority to impose damages shall not be deemed Port Authority acceptance of unsatisfactory performance or a failure to perform on the part of the Contractor or a waiver of its remedies hereunder.

7. Increase and Decrease in Number of Accounts

a) After award of the Contract to Contractor, the Port Authority reserves the right to increase or decrease the number of Accounts within an Account Group, at the contracted price under the same terms and conditions as applicable under this Contract, provided that the aggregate usage of all additional Accounts does not exceed, or with respect to deleted Accounts is less than specified percentage of the contracted amount for the relevant Account Group as listed in Appendix I.

b) For all accounts that exceed the limit specified in (a) above, the Port Authority shall provide an estimate of the electric requirements for said account(s) and the Contractor will be asked to provide a price for said account(s) under the same terms and conditions as applicable under this Contract. The Port Authority will provide this information at least thirty (30) days prior to the desired flow date. The Contractor will have fifteen (15) days to provide a price for the new accounts. The Port Authority will have the ability to decline the price offered by

the Contractor if it is not in the Port Authority's best interests, in its sole discretion. Adding and deleting accounts shall be accomplished through an amendment of this Contract.

c) Any change in the Account number or designation of Account set forth in the Port Authority's notice of Contract award shall not be considered an addition or deletion of an Account.

8. Title to Electricity

The Contractor warrants title to all electricity delivered to the applicable EDC delivery point and warrants that it has the right to sell same and that such electricity is free from liens and adverse claims of every kind.

9. Force Majeure

a) Either party to this Contract may be excused from performing its obligations and shall not be liable to the other party under this Contract as a result of an Event of Force Majeure, but only for the period during which, and to the extent that, such Event of Force Majeure renders the party unable to perform its obligations. The party claiming excuse of performance pursuant to this provision shall give written notice to the other party as soon as practicable after the occurrence of the Event of Force Majeure.

b) Any suspension of performance pursuant to this provision shall not extend the term of this Contract.

c) An "Event of Force Majeure" shall be limited to the following occurrences:

1. A force majeure event described in the "General Terms and Conditions" of the relevant utility tariff applicable to the specific Account(s) in question;

2. A suspension, curtailment or discontinuance of delivery service by the EDC or transmission service outages on the PJM or NYISO grid (except for a discontinuance due to any act or omission of the Port Authority described in the "General Terms and Conditions" of the relevant utility tariff) or a cessation of the use and occupancy of a Port Authority facility due to circumstances beyond the control of Port Authority;

3. An Event of Force Majeure will not include any events or consequences that result from a party's negligence, willful misconduct, or economic hardship, including increases in the price or cost of electric supply to the Contractor(s) to serve the Port Authority.

PART IV – SIGNATURE SHEET, NAME AND RESIDENCE OF PRINCIPALS SHEET AND AUCTION PRICING

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PART IV – SIGNATURE SHEET, NAME AND RESIDENCE OF PRINCIPALS' SHEET AND AUCTION PRICING

1. SIGNATURE SHEET

OFFER: The undersigned offers and agrees to furnish to The Port Authority of New York and New Jersey the services and/or materials in compliance with all terms, conditions, specifications and Addenda of the Contract in the event that the Bidder's bid, submitted through the World Energy Solutions, Incorporated, (hereinafter"WES" or "WES Energy"), auction platform, is accepted by the Port Authority. Signature also certifies understanding and compliance with the certification requirements of the standard terms and conditions as contained in the Standard Contract Terms and Conditions.

The undersigned certify that they are authorized to execute this solicitation on behalf of their respective organizations. This Agreement may be executed in two or more counterparts, each of which shall be an original.

Bids submitted through the auction must be held firm for two hours after auction close, but no Bid will be required to be held firm past 3:00 PM Eastern Time on the day of the auction. However, if the NYMEX Henry Hub 12 month natural gas strip as quoted at www.nymex.com moves up or down by more than 7.5% at any time between the auction start time and auction end time as compared to the NYMEX Henry Hub settled price, only, as published in Platt's Gas Daily, the Port Authority will not require Bidders to hold their bid prices if award notification has not already been provided; however, Bidders may hold their bid prices at their own risk.

A Bidder must notify WES via e-mail at vmelesiute@worldenergy.com if it wishes to delete a bid prior to award notification due to such a market movement of more than 7.5% in either direction; verbal communication will not be accepted. WES and the Port Authority, in their sole discretion, must verify such market movement of more than 7.5% in either direction (and shall send an email to Bidder confirming the same) in order for the bid to be cancelled. Otherwise, if no verification of such market movement is made by the Port Authority and WES, the Bidder's bid shall not be cancelled and will remain in effect for purposes of the auction.

ONLY THE COMPANY NAMED AS THE BIDDING ENTITY BELOW WILL RECEIVE PAYMENT. THIS MUST BE THE SAME NAMED COMPANY AS INDICATED ON THE COVER SHEET

Bidding Entity_____

Bidder's Address_____

City, State, Zip_____

Telephone No._____ FAX_____

Email_____ EIN# _____

SIGNATURE_____ Date_____

Print Name and Title_____

ACKNOWLEDGEMENT:

STATE OF: _____

COUNTY OF: _____

On this ___day *of*_____, 20 , personally came before me, _____,who duly sworn by me, did depose that (s)he has knowledge of the matters herein stated and they are in all respects true and that (s)he has been authorized to execute the foregoing offer and statement of irrevocability on behalf of said corporation, partnership or firm.

_____
Notary Public

NOTE: If a joint venture is allowed, duplicate this Signature Sheet and have each party to the joint venture sign separately and affix to the back of this Signature Sheet.

Bidder attention is called to the certification requirements contained in the Standard Contract Terms and Conditions. Indicate below if a signed, explanatory statement in connection with this section is attached hereto.

If certified by the Port Authority as an SBE or MWBE: _____ (indicate which one and date).

2. NAME AND RESIDENCE OF PRINCIPALS SHEET

Names and Residence of Principals of Bidder. If general or limited partner, or individual, so indicate.

NAME	TITLE	ADDRESS OF RESIDENCE (Do not give business address)

3. AUCTION PRICING

Entry of Prices

The Port Authority is utilizing an internet-based energy auction platform provided by WES to obtain pricing for this procurement. Bidders invited to participate in the auction(s) shall submit bids including prices at www.wesplatform.com in accordance with the instructions in this solicitation and appearing on the WES website: https://www.wesplatform.com/webportal/Public/Announcement.aspx?ID=iTDu1E3n%2f%2fU%3d

A detailed auction schedule will be posted prior to the day of the auction(s). All pricing information must be submitted on the WES auction platform by the close of each reverse auction. Any bid submitted through the auction platform on the day of the auction, prior to auction close is considered binding. Bids will only be considered on the date they are received. Once a price quote for an Account Group is accepted and awarded by the Port Authority, no further quotes for that Account Group will be considered.

Alternate bids (bids on terms or conditions different than those established by this bid solicitation) are not permitted; all prices submitted through the WES auction platform shall be in accordance with the provisions of this bid solicitation. It shall be the express responsibility of the Bidder to understand both the rules and the mechanics of the WES auction platform.

In each auction, all bid prices must be entered in **dollars per kilowatt-hour with five decimal places**. If a bid is accepted by the Port Authority, the Contractor(s) will be held to its bid price for the entire Contract term, and Contractor shall be responsible, at its sole cost and expense, for all production, severance, ad valorem or similar taxes levied on the generation, capacity, acquisition, purchase, transmission of, and all other activities associated with, the provision of Electric Generation Service by Contractor to the EDC's transmission grid.

Bidders are advised that the Port Authority, in its discretion, may verify only that bid or those bids that it determines are appropriate to verify and may not check each bid for computational errors that are made by a Bidder. The Port Authority reserves the right to correct any such errors and to re-compute the Bidder's computations, as required, based on any such corrections needed. In the event that any such corrections or re-computations are made, they shall be based, as applicable, on the Unit Price(s) (dollar per kWh) inserted by the Bidder, which amount(s) shall govern in all cases.

All Bidders are asked to ensure that all figures are inserted as required, and that all computations made have been verified by the Bidder for accuracy.

4. FEE STRUCTURE

Each Bidder hereby agrees to pay a procurement fee of $0.0009 per kWh to WES, based on actual kWh usage for all Account Groups awarded through the WES auction process. The procurement fee should be factored into the Bidder's bid price.

This fee will be paid by the successful Contractor(s) directly to WES in accordance with the Payment Instructions Document found at https://www.wesplatform.com/webportal/Public/Announcement.aspx?ID=iTDu1E3n%2f%2fU%3d

This procurement fee shall apply to the Base Term of the Contract. The procurement fee that may apply to any Option Period(s) will be determined and disclosed to the Contractor(s) at the time of the Port Authority's exercise of such Option Period(s).

The Contractor(s) shall be responsible for providing a summary accounting of the monthly volume of electricity delivered (as described in Part III, section 3(j) of this solicitation) and the resulting fees paid to WES per Account on or before the twenty-fifth (25th) day of each month in accordance with the Payment Instructions Document found at https://www.wesplatform.com/webportal/Public/Announcement.aspx?ID=iTDu1E3n%2f%2fU%3d

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PART V – SPECIFICATIONS

1a. Specific Definitions

Account: Accounts for electric power supply as metered by the Port Authority's EDC and identified in Appendix I.

Account Group: A combination of Port Authority electricity Accounts compiled by the Port Authority and listed in Appendix I, for purposes of the internet-based energy auction platform upon which bids will be solicited from Pre-Qualified Bidders.

Adjusted Market Cost ($): In the case of an Account Group consuming more kWh than the Maximum Monthly Consumption Amount, the following formula will be used to calculate the adjusted cost:

[(Consumption During Billing Period) – (Maximum Monthly Consumption Amount)] x (Day Ahead Load Weighted Average)

In the case of an Account Group consuming less kWh than the Minimum Monthly Consumption Amount, the following formula will be used to calculate the adjusted cost:

[(Minimum Monthly Consumption Amount) – (Consumption During Billing Period)] x [(Real Time Locational Marginal Price) – (Contract Rate)]

Billing Period: The period between actual or estimated meter readings used by the EDC for billing purposes.

Consumption During Billing Period: In the case of an Account Group with only one Account, Consumption During Billing Period shall be the number of kWh consumed during a single Billing Period.

In the case of an Account Group with more than one Account having different Billing Periods, Consumption During Billing Period shall be the consumption per calendar month calculated by pro rating the consumption of each Account and summing the pro-rated totals to arrive at the Consumption During Billing Period to correspond with the single Billing Period.

Contract Rate: The $/kWh rate as shown in the Port Authority Notice of Contract award.

Day Ahead Load Weighted Average: The average price per kWh over a given Billing Period calculated by summing the product of the kWh consumed for each hour of an Account's Hourly Consumption Profile by the relevant EDC for the corresponding hour and dividing the sum by the total number of kWh consumed over the said Billing Period.

Electric Distribution Company (EDC): A public utility that transmits and distributes electricity to end users. For purposes of this Contract, the relevant EDC in New York is the Central Hudson Gas and Electric Corporation (CenHud) and the relevant EDC in New Jersey is the Public Service Electric and Gas Company (PSE&G).

Electric Generation Service: The provision of retail electric generation service and capacity, which is generated off-site from the location at which the consumption of such electric generation service and capacity is metered for retail billing purposes, including agreements and arrangements related thereto.

Electronic Data Interchange (EDI): An electronic means of exchanging account and usage information and for executing various transactions between electric power suppliers and EDCs that is subject to specific protocols by the applicable state regulatory authority.

Firm, Fixed Price Electric Generation Service: The price for Electric Generation Service that is based on a single, per kWh amount that remains fixed throughout the duration of the Contract.

Hourly Consumption Profile: The consumption profile for an electricity Account which describes the actual amount of electricity consumed per hour over a given period of time. In instances where an Hourly Consumption Profile is needed but an Account is not equipped with interval metering equipment, the generic profile supplied by the Account's EDC for that Account's rate class and/or strata should be used.

Index Price Electric Generation Service: The price for Electric Generation Service provided by the Contractor to the Port Authority that is based on a per kWh price for energy that varies on an hourly basis.

Installed Capacity (ICAP): A capacity pricing plan as defined by PJM to replace the current installed capacity market. The ICAP prices capacity based on need within various load zones to encourage power plant development in constrained regions. The location and/or zone in the context of this definition will be defined by PJM.

Maximum Monthly Consumption Amount: The maximum amount of electricity an Account Group consumes during a Billing Period without being subject to the Adjusted Market Cost. The Maximum Monthly Consumption Amount is calculated by the following formula:

(Bandwidth % + 100%) x (historical usage during the relevant Billing Period as set forth on Appendix I).

Minimum Monthly Consumption Amount: The minimum amount of electricity an Account Group consumes during a Billing Period without being subject to the Adjusted Market Cost. The Minimum Monthly Consumption Amount is calculated by the following formula:

(100% - Bandwidth %) x (historical usage during the relevant Billing Period as set forth on Appendix I).

Meter Read Date: The Day on which an electric Account's meter is read, as established by the relevant EDC for that Account.

New York Mercantile Exchange (NYMEX) Henry Hub: The pricing point for natural gas futures contracts traded on the New York Mercantile Exchange. NYMEX is a dedicated contract market that offers products subject to NYMEX rules and regulations.

New York Independent System Operator (NYISO): The New York Independent System Operator (NYISO) oversees the state's transmission facilities to maintain reliability. It is responsible for administering the ISO Transmission Tariff and implementing and operating New York's Open Access Same-Time Information System (OASIS).

Pennsylvania-Jersey-Maryland Interconnection (PJM): The entity that operates the electric transmission grid and administers and monitors wholesale electricity markets that serve all or parts of certain states, including New Jersey.

Real Time Locational Marginal Price (LMP): The real time hourly integrated market clearing marginal price for energy at the location the energy is delivered or received.

1b. Pricing Product Instructions

All bids must be made in accordance with the following pricing instructions, any Addenda issued by the Port Authority and the instructions provided by World Energy Solutions, Incorporated, (hereinafter "WES" or "WES Energy"), on its energy auction platform.

The Port Authority is considering two (2) alternative pricing structures (products) for the various Account Groups set forth in Appendix I. The two alternative pricing structures for which the Port Authority is requesting bids are as follows:

1. **Firm, Fixed Price Electric Generation Service:** Bids for this Account Group should consist of a single price per kWh for Electric Generation Service.

   Firm, fixed prices for all Accounts in the State of New York and the State of New Jersey should include all services and products necessary to provide firm delivery of energy to the Port Authority for all kilowatt-hours ("kWh") metered by the

EDC, including but not limited to commodity energy, capacity charges, transmission charges, ancillary services, RPS (if applicable), line losses and WES procurement fee. Bids should include all applicable state sales and use taxes.

2. **Index Price Electric Generation Service:** Bids for this Account Group should consist of a single fixed retail adder per kWh; the price for energy varies on an hourly basis in accordance with market conditions.

   (i) For Accounts in the State of New Jersey: Price for the commodity associated with the PJM Day Ahead market for the applicable load zone with a fixed retail adder charge. The retail adder for the applicable PJM Day Ahead market load zone should include all applicable capacity charges, transmission charges, ancillary services, congestion costs, operating reserve charge, RPS, New Jersey State Sales and Use Tax and WES procurement fee. Line losses must be treated as a pass-through charge for this product.

   (ii) For Accounts in the State of New York: Price for the commodity associated with the NYISO Day Ahead market for the applicable load zone with a fixed retail adder charge. The retail adder for the applicable NYISO Day Ahead market load zone should include all applicable capacity charges, transmission charges, ancillary services, congestion costs, operating reserve charge, RPS (if applicable), any applicable state sales and use taxes and WES procurement fee. Line losses must be treated as a pass-through charge for this product.

Bandwidth: For each Account Group, a percentage of the volumes listed in Appendix I for the same month of consumption in the previous year. Bandwidth for a particular Account Group will be provided on Appendix I. Maximum Monthly Consumption Amounts and Minimum Monthly Consumption Amounts will be based on total volumes at the Account Group level rather than the Account level. Account Groups will have both a Minimum and Maximum Monthly Consumption Amount. For any volumes used over the Maximum Monthly Consumption Amount, the Contractor will calculate the Adjusted Market Cost to determine the cost per kWh for the volume that exceeded the Maximum Monthly Consumption Amount. For any volumes used under the Minimum Monthly Consumption Amount, the Contractor will calculate the Adjusted Market Cost to determine the cost per kWh for unused volumes.

Renewable Energy Portfolio Standard (RPS): Electricity suppliers shall comply with any requirements for renewable energy sources established by the NJBPU and NYPSC.

2. Work Required by the Specifications

These Specifications relate generally to the performance of Electric Generation Service required by this Contract.

The scope of work is as follows:

a) The Port Authority has issued this bid for the purchase of Electric Generation Service pursuant to the laws in New York and New Jersey that govern and regulate the wholesale electricity markets and the selection of Electric Generation Service supplier(s) to replace the current contract upon its expiration and to purchase such service for certain additional Port Authority Accounts in the states of New York and/or New Jersey.

b) The selected Contractor(s) will sell to the Port Authority, and the Port Authority agrees to purchase from Contractor, Electric Generation Service for use by the Port Authority for the applicable Account Group(s) pursuant to the terms and conditions of this bid, including any Addenda thereto, and the relevant utility tariffs.

c) The Port Authority shall not be responsible for any expenditure of monies or other expenses Bidders incur before issuance of a Contract, purchase order or agreement, and, thereafter, only as provided by the Contract.

d) The Contractor shall be in compliance with applicable utility tariffs and NJBPU and NYPSC-approved rules applicable to third party suppliers.

e) The Contractor(s) will provide Electric Generation Service to all of the Port Authority Accounts within the Account Group(s) for which an award has been made to the Contractor.

f) In the sole discretion of the Port Authority, Electric Generation Service will be provided to all Accounts in a given Account Group at either: (i) a Firm, Fixed Price Electric Generation Service for the entire Contract term; or (ii) an Index Price Electric Generation Service.

If the Index Price Electric Generation Service product under subparagraph (ii) under paragraph (f), above, is selected by the Port Authority, the Port Authority shall retain the right at any time during the term of the Contract to seek a quote from the Contractor for a Firm, Fixed Price Electric Generation Service and to convert, without penalty or fee, to a fixed price product for a mutually agreed upon duration at a price agreed upon by the parties and consistent with then-prevailing market conditions.

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STANDARD CONTRACT TERMS AND CONDITIONS

PART I GENERAL DEFINITIONS

To avoid undue repetition, the following terms, as used in this Agreement, shall be construed as follows:

Authority or Port Authority - shall mean the Port Authority of New York and New Jersey.

Contract, Document or Agreement - shall mean the writings setting forth the scope, terms, conditions and Specifications for the procurement of Goods and/or Services, as defined hereunder and shall include, but not be limited to: Invitation for Bid (IFB), Request for Quotation (RFQ), Request for Proposal (RFP), Purchase Order (PO), Cover Sheet, executed Signature Sheet, AND PRICING SHEETS with Contract prices inserted," "STANDARD CONTRACT TERMS AND CONDITIONS," and, if included, attachments, endorsements, schedules, exhibits, or drawings, the Authority's acceptance and any written addenda issued over the name of the Authority's Manager, Purchasing Services Division.

Days or Calendar Days - shall mean consecutive calendar days, Saturdays, Sundays, and holidays, included.

Week - unless otherwise specified, shall mean seven (7) consecutive calendar days, Saturdays, Sundays, and holidays.

Month - unless otherwise specified, shall mean a calendar month.

Director - shall mean the Director of Environmental and Energy Programs, the Department which 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 Deputy Director for Energy, Office of Environmental and Energy Programs, for the time being 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.

No person shall be deemed a representative of the Director or Manager except to the extent specifically authorized in an express written notice to the Contractor signed by the Director or Manager, as the case may be. Further, no person shall be deemed a successor in duties of the Director unless the Contractor is so notified in writing signed by the Authority. No person shall be deemed a successor in duties of the Manager unless the Contractor is so notified in a writing signed by the Director.

Minority Business Enterprise (MBE) - shall mean a business entity which is at least 51% owned and controlled by one or more members of one or more minority groups, or, in the case of a publicly held corporation, at least 51% of the stock of which is owned by 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.

"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 Mexican, Puerto Rican, 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) Native American 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.

Site of the Work - or words of similar import shall mean the Facility and all buildings and properties associated therewith as described in this Contract.

Small Business Enterprise (SBE) - The criteria for a Small Business Enterprise are:

- The principal place of business must be located in New York or New Jersey;
- The firm must have been in business for at least three years with activity;
- Average gross income limitations by industry as established by the Port Authority.

Subcontractor - shall mean anyone who performs work (other than or in addition to the furnishing of materials, plant or equipment) in connection with the services to be provided hereunder, directly or indirectly for or on behalf of the Contractor (and whether or not in privity of contract with the Contractor), but shall not include any person who furnished merely his own personal labor or his own personal services. "Subcontractor", however, shall exclude the Contractor or any subsidiary or parent of the Contractor or any person, firm or corporation which has a substantial interest in the Contractor or in which the Contractor or the parent or the subsidiary of the Contractor, or an officer or principal of the Contractor or of the parent of the subsidiary of the Contractor has a substantial interest, provided, however, that for the purpose of the clause hereof entitled "Assignments and Subcontracts" the exclusion in this paragraph shall not apply to anyone but the Contractor itself.

Women-Owned Business Enterprise (WBE) - shall mean a business enterprise which is at least 51% owned by one or more women, or, in the case of a publicly held corporation, at least 51% 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 or resident aliens.

Work - shall mean all services, equipment and materials (including materials and equipment, if any, furnished by the Authority) and other facilities and all other things necessary or proper for, or incidental to the services to be performed or goods to be furnished in connection with the service to be provided hereunder.

PART II GENERAL PROVISIONS

1. Facility Rules and Regulations of The Port Authority

a. The Contractor shall observe and obey (and compel its officers, employees, guests, invitees, and those doing business with it, to observe and obey) the facility Rules and Regulations of the Port Authority now in effect, and such further reasonable Rules and Regulations which may from time to time during the term of this Agreement be promulgated by the Port Authority for reasons of safety, health, preservation of property or maintenance of a good and orderly appearance and efficient operation of the Facility. The Port Authority agrees that, except in case of emergency, it shall give notice to the Contractor of every Rule and Regulation hereafter adopted by it at least five days before the Contractor shall be required to comply therewith.

b. A copy of the facility Rules and Regulations of the Port Authority shall be available for review by the Contractor at the Office of the Secretary of the Port Authority.

2. Contractor Not An Agent

This Agreement does not constitute the Contractor the agent or representative of the Port Authority for any

purpose whatsoever except as may be specifically provided in this Agreement. It is hereby specifically acknowledged and understood that the Contractor, in performing its services hereunder, is and shall be at all times an independent Contractor and the officers, agents and employees of the Contractor shall not be or be deemed to be agents, servants or employees of the Port Authority.

3. Contractor's Warranties

The Contractor represents and warrants:

a. That it is financially solvent, that it is experienced in and competent to perform the requirements of this Contract, that the facts stated or shown in any papers submitted or referred to in connection with the solicitation are true, and, if the Contractor be a corporation, that it is authorized to perform this Contract;
b. That it has carefully examined and analyzed the provisions and requirements of this Contract, and that from its own investigations it has satisfied itself as to the nature of all things needed for the performance of this Contract, the general and local conditions and all other matters which in any way affect this Contract or its performance, and that the time available to it for such examination, analysis, inspection and investigation was adequate;
c. That the Contract is feasible of performance in accordance with all its provisions and requirements and that it can and will perform it in strict accordance with such provisions and requirements;
d. That no Commissioner, officer, agent or employee of the Port Authority is personally interested directly or indirectly in this Contract or the compensation to be paid hereunder;
e. That, except only for those representations, statements or promises expressly contained in this Contract, no representation, statement or promise, oral or in writing, of any kind whatsoever by the Port Authority, its Commissioners, officers, agents, employees or consultants has induced the Contractor to enter into this Contract or has been relied upon by the Contractor, including any with reference to: (1) the meaning, correctness, suitability, or completeness of any provisions or requirements of this Contract; (2) the nature, quantity, quality or size of the materials, equipment, labor and other facilities needed for the performance of this Contract; (3) the general or local conditions which may in any way affect this Contract or its performance; (4) the price of the Contract; or (5) any other matters, whether similar to or different from those referred to in (1) through (4) immediately above, affecting or having any connection with this Contract, the bidding thereon, any discussions thereof, the performance thereof or those employed therein or connected or concerned therewith.

The Contractor further represents and warrants that it was given ample opportunity and time and by means of this paragraph was requested by the Port Authority to review thoroughly all documents forming this Contract prior to opening of Bids on this Contract in order that it might request inclusion in this Contract of any statement, representation, promise or provision which it desired or on which it wished to place reliance; that it did so review said documents, that either every such statement, representation, promise or provision has been included in this Contract or else, if omitted, that it expressly relinquishes the benefit of any such omitted statement, representation, promise or provision and is willing to perform this Contract without claiming reliance thereon or making any other claim on account of such omission.

The Contractor further recognizes that the provisions of this numbered clause (though not only such provisions) are essential to the Port Authority's consent to enter into this Contract and that without such provisions, the Authority would not have entered into this Contract.

4. Personal Non-Liability

Neither the Commissioners of the Port Authority nor any of them, nor any officer, agent or employee thereof, shall be charged personally by the Contractor with any liability, or held personally liable to the Contractor under any term or provision of this Agreement, or because of its execution or attempted execution, or because of any breach, or attempted or alleged breach, thereof.

5. Equal Employment Opportunity, Affirmative Action, Non-Discrimination

a. The Contractor is charged with having full knowledge of and shall comply with all applicable federal,

State and local statutes, ordinances, rules and regulations and, federal Executive Orders, pertaining to equal employment opportunity, affirmative action, and non-discrimination in employment.

b. Without limiting the generality of any other term or provision of this Contract, in the event of the Contractor's non-compliance with the equal opportunity and non-discrimination clause of this Contract, or with any of such statutes, ordinances, rules, regulations or Orders, this Contract may be cancelled, terminated or suspended in whole or in part.

6. Rights and Remedies of the Port Authority

The Port Authority shall have the following rights in the event the Contractor is deemed guilty of a breach of any term whatsoever of this Contract:

a. The right to take over and complete the Work or any part thereof as agent for and at the expense of the Contractor, either directly or through others.
b. The right to cancel this Contract as to any or all of the Work yet to be performed.
c. The right to specific performance, an injunction or any appropriate equitable remedy.
d. The right to money damages.

For the purpose of this Contract, breach shall include but not be limited to the following, whether or not the time has yet arrived for performance of an obligation under this Contract: a statement by the Contractor to any representative of the Port Authority indicating that the Contractor cannot or will not perform any one or more of its obligations under this Contract; any act or omission of the Contractor or any other occurrence which makes it improbable at the time that it will be able to perform any one or more of its obligations under this Contract; any suspension of or failure to proceed with any part of the Work by the Contractor which makes it improbable at the time that it will be able to perform any one or more of its obligations under this Contract.

The enumeration in this numbered clause or elsewhere in this Contract of specific rights and remedies of the Port Authority shall not be deemed to limit any other rights or remedies which the Authority would have in the absence of such enumeration; and no exercise by the Authority of any right or remedy shall operate as a waiver of any other of its rights or remedies not inconsistent therewith or to estop it from exercising such other rights or remedies.

7. Rights and Remedies of the Contractor

Inasmuch as the Contractor can be adequately compensated by money damages for any breach of this Contract which may be committed by the Port Authority, the Contractor expressly agrees that no default, act or omission of the Port Authority shall constitute a material breach of this Contract, entitling the Contractor to cancel or rescind this Contract or to suspend or to abandon performance.

8. Submission To Jurisdiction

The Contractor hereby irrevocably submits itself to the jurisdiction of the Courts of the State of New York and New Jersey, with regard to any controversy arising out of, connected with, or in any way concerning this Contract.

The Contractor agrees that the service of process on the Contractor in relation to such jurisdiction may be made, at the option of the Port Authority, either by registered or certified mail addressed to it at the address of the Contractor indicated on the signature sheet, or by actual personal delivery to the Contractor, if the Contractor is an individual, to any partner if the Contractor be a partnership or to any officer, director or managing or general agent if the Contractor be a corporation.

Such service shall be deemed to be sufficient when jurisdiction would not lie because of the lack of basis to serve process in the manner otherwise provided by law. In any case, however, process may be served as stated above whether or not it might otherwise have been served in a different manner.

9. Harmony

a. The Contractor shall not employ any persons or use any labor, or use or have any equipment, or permit any condition to exist which shall or may cause or be conducive to any labor complaints, troubles, disputes or controversies at the Facility which interfere or are likely to interfere with the operation of the Port Authority or with the operations of lessees, licensees or other users of the Facility or with the operations of the Contractor under this Contract.

   The Contractor shall immediately give notice to the Port Authority (to be followed by written notices and reports) of any and all impending or existing labor complaints, troubles, disputes or controversies and the progress thereof. The Contractor shall use its best efforts to resolve any such complaint, trouble, dispute or controversy. If any type of strike, boycott, picketing, work stoppage, slowdown or other labor activity is directed against the Contractor at the Facility or against any operations of the Contractor under this Contract, whether or not caused by the employees of the Contractor, and if any of the foregoing, in the opinion of the Port Authority, results or is likely to result in any curtailment or diminution of the services to be performed hereunder or to interfere with or affect the operations of the Port Authority, or to interfere with or affect the operations of lessees, licensees, or other users of the Facility or in the event of any other cessation or stoppage of operations by the Contractor hereunder for any reason whatsoever, the Port Authority shall have the right at any time during the continuance thereof to suspend the operations of the Contractor under this Contract, and during the period of the suspension the Contractor shall not perform its services hereunder and the Port Authority shall have the right during said period to itself or by any third person or persons selected by it to perform said services of the Contractor using the equipment which is used by the Contractor in its operations hereunder as the Port Authority deems necessary and without cost to the Port Authority. During such time of suspension, the Contractor shall not be entitled to any compensation. Any flat fees, including management fees, shall be pro-rated. Prior to the exercise of such right by the Port Authority, it shall give the Contractor notice thereof, which notice may be oral. No exercise by the Port Authority of the rights granted to it in the above subparagraph shall be or be deemed to be a waiver of any rights of termination or revocation contained in this Contract or a waiver of any rights or remedies which may be available to the Port Authority under this Contract or otherwise.

b. The Contractor shall so plan and conduct its operations as to work in harmony with others engaged at the site and not to delay, endanger or interfere with the operation of others (whether or not specifically mentioned above), all to the best interests of the Port Authority and the public as may be directed by the Port Authority.

10. Claims of Third Persons

The Contractor undertakes to pay all claims lawfully made against it by subcontractors, suppliers and workers, and all claims lawfully made against it by other third persons arising out of or in connection with or because of the performance of this Contract and to cause all subcontractors to pay all such claims lawfully made against them.

11. No Third Party Rights

Nothing contained in this Contract is intended for the benefit of third persons, except to the extent that the Contract specifically provides otherwise by use of the words "benefit" or "direct right of action."

12. Provisions of Law Deemed Inserted

Each and every provision of law and clause required by law 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 therein, and if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of either party, the Contract shall forthwith be physically amended to make such insertion.

13. Costs Assumed By The Contractor

It is expressly understood and agreed that all costs of the Contractor of whatever kind or nature and whether imposed directly upon the Contractor under the terms and provisions hereof or in any other manner whatsoever because of the requirements of the operation of the service under this Agreement shall be borne by the Contractor or without compensation or reimbursement from the Port Authority, except as specifically set forth in this Agreement. The entire and complete cost and expense of the Contractor's services and operations hereunder shall be borne solely by the Contractor and under no circumstances shall the Port Authority be liable to any third party (including the Contractor's employees) for any such costs and expenses incurred by the Contractor and under no circumstances shall the Port Authority be liable to the Contractor for the same, except as specifically set forth in this Section.

14. Default, Revocation or Suspension of Contract

a. If one or more of the following events shall occur:

1. If fire or other cause shall destroy all or a substantial part of the Facility.

2. If any governmental agency shall condemn or take a temporary or permanent interest in all or a substantial part of the Facility, or all of a part of the Port Authority's interest herein;

then upon the occurrence of such event or at any time thereafter during the continuance thereof, the Port Authority shall have the right on twenty-four (24) hours written notice to the Contractor to revoke this Contract, such revocation to be effective upon the date and time specified in such notice.

In such event this Contract shall cease and expire on the effective date of revocation as if said date were the date of the expiration of this Contract. Such revocation shall not, however, relieve the Contractor of any liabilities or obligations hereunder which shall have accrued on or prior to the effective date of revocation.

b. If one or more of the following events shall occur:

1. The Contractor shall become insolvent, or shall take the benefit of any present or future insolvency statute, or shall make a general assignment for the benefit of creditors, or file a voluntary petition in bankruptcy or a petition or answer seeking an arrangement or its reorganization or the readjustment of its indebtedness under the federal bankruptcy laws or under any other law or statute of the United States or of any State thereof, or consent to the appointment of a receiver, trustee, or liquidator of all or substantially all its property; or
2. By order or decree of a court the Contractor shall be adjudged bankrupt or an order shall be made approving a petition filed by any of the creditors, or, if the Contractor is a corporation, by any of the stockholders of the Contractor, seeking its reorganization or the readjustment of its indebtedness under the federal bankruptcy laws or under any law or statute of the United States or of any State thereof; or
3. A petition under any part of the federal bankruptcy laws or an action under any present or future insolvency law or statute shall be filed against the Contractor and shall not be dismissed within thirty (30) days after the filing thereof; or
4. The interest of the Contractor under this Contract shall be transferred to, passed to or devolve upon, by operation of law or otherwise, any other person, firm or corporation, or
5. The Contractor, if a corporation, shall, without the prior written approval of the Port Authority, become a surviving or merged corporation in a merger, a constituent corporation in a consolidation, or a corporation in dissolution; or
6. If the Contractor is a partnership, and the said partnership shall be dissolved as the result of any act or omission of its copartners or any of them, or by operation of law or the order or

decree of any court having jurisdiction, or for any other reason whatsoever; or

7. By or pursuant to, or under authority of any legislative act, resolution or rule, or any order or decree of any court or governmental board, agency or officer having jurisdiction, a receiver, trustee, or liquidator shall take possession or control of all or substantially all of the property of the Contractor and such possession or control of all or substantially all of the property of the Contractor and shall continue in effect for a period of fifteen (15) days;

then upon the occurrence of any such event or at any time thereafter during the continuance thereof, the Port Authority shall have the right upon five (5) days notice to the Contractor to terminate this Contract and the rights of the Contractor hereunder; termination to be effective upon the date and time specified in such notice as if said date were the date of the expiration of this Contract. Termination shall not relieve the Contractor of any liabilities or obligations hereunder which have accrued on or prior to the effective date of termination.

c. If any of the following shall occur:

1. The Contractor shall cease, abandon any part of the service, desert, stop or discontinue its services in the premises for any reason whatsoever and regardless of the fault of the Contractor; or

2. The Contractor shall fail to keep, perform and observe each and every other promise, covenant and agreement set forth in this Contract on its part to be kept, performed or observed, within five (5) days after receipt of notice of default thereunder from the Port Authority (except where fulfillment of its obligations requires activity over a greater period of time, and the Contractor shall have commenced to perform whatever may be required for fulfillment within five (5) days after receipt of notice and continues such performance without interruption except for causes beyond its control);

then upon the occurrence of any such event or during the continuance thereof, the Port Authority shall have the right on twenty four (24) hours notice to the Contractor to terminate this Contract and the rights of the Contractor hereunder, termination to be effective upon the date and time specified in such notice. Termination shall not relieve the Contractor of any liabilities which shall have accrued on or prior to the effective date of termination.

d. If any of the events enumerated in this Section shall occur prior to commencement date of this Contract the Port Authority upon the occurrence of any such event or any time thereafter during the continuance thereof by twenty-four (24) hours notice may terminate or suspend this Contract and the rights of the Contractor hereunder, such termination or suspension to be effective upon the date specified in such notice.

e. No payment by the Port Authority of any monies to the Contractor for any period or periods after default of any of the terms, covenants or conditions hereof to be performed, kept and observed by the Contractor and no act or thing done or omitted to be done by the Port Authority shall be deemed to be a waiver of the right of the Port Authority to terminate this Contract or of any other right or remedies to which the Port Authority may be entitled because of any breach thereof. No waiver by the Port Authority of any default on the part of the Contractor in the performance of any of the terms, covenants and conditions hereof to be performed, kept or observed by the Contractor shall be or be construed to be a waiver by the Port Authority of any other subsequent default in the performance of any of the said terms, covenants and conditions.

f. Any right of termination contained in this paragraph, shall be in addition to and not in lieu of any and all rights and remedies that the Port Authority shall have at law or in equity consequent upon the Contractor's breach of this Contract and shall be without prejudice to any and all such other

rights and remedies. It is hereby specifically agreed and understood that the exercise by the Port Authority of any right of termination set forth in this paragraph shall not be or be deemed to be an exercise by the Port Authority of an election of remedies so as to preclude the Port Authority from any right to money damages it may have for the period prior to the effective date of termination to the original expiration date of the Contract, and this provision shall be deemed to survive the termination of this Contract as aforesaid.

g. If (1) the Contractor fails to perform any of its obligations under this Contract or any other agreement between the Port Authority and the Contractor (including its obligation to the Port Authority to pay any claim lawfully made against it by any supplier, subcontractor or worker or other person which arises out of or in connection with the performance of this Contract or any other agreement with the Port Authority) or (2) any claim (just or unjust) which arises out of or in connection with this Contract or any other agreement between the Port Authority and the Contractor is made against the Port Authority or (3) any subcontractor under this Contract or any other agreement between the Port Authority and the Contractor fails to pay any claims lawfully made against it by any supplier, subcontractor, worker or other third person which arises out of or in connection with this Contract or any other agreement between the Port Authority and the Contractor or if in the opinion of the Port Authority any of the aforesaid contingencies is likely to arise, then the Port Authority shall have the right, in its discretion, to withhold out of any payment (final or otherwise) such sums as the Port Authority may deem ample to protect it against delay or loss or to assure the payment of just claims of third persons, and to apply such sums in such manner as the Port Authority may deem proper to secure such protection or satisfy such claims. All sums so applied shall be deducted from the Contractor's compensation. Omission by the Port Authority to withhold out of any payment, final or otherwise, a sum for any of the above contingencies, even though such contingency has occurred at the time of such payment, shall not be deemed to indicate that the Port Authority does not intend to exercise its right with respect to such contingency. Neither the above provisions for rights of the Port Authority to withhold and apply monies nor any exercise or attempted exercise of, or omission to exercise, such rights by the Port Authority shall create any obligation of any kind to such supplier, subcontractors, worker or other third persons. If, however, the payment of any amount due the Contractor shall be improperly delayed, the Port Authority shall pay the Contractor interest thereon at the rate of 6% per annum for the period of the delay, it being agreed that such interest shall be in lieu of and in liquidation of any damages to the Contractor because of such delay.

h. If the Port Authority has paid any sum or has incurred any obligation or expense which the Contractor has agreed to pay or reimburse the Port Authority, or if the Port Authority is required or elects to pay any sum or sums or incurs any obligations or expense by reason of the failure, neglect or refusal of the Contractor to perform or fulfill any one or more of the conditions, covenants, or agreements contained in this Contract, or as a result of an act of omission of the Contractor contrary to the said conditions, covenants and agreements, the Contractor shall pay to the Port Authority the sum or sums so paid or expense so incurred, including all interests, costs and damages, promptly upon the receipt of the Port Authority's statement therefore. The Port Authority may, however, in its discretion, elect to deduct said sum or sums from any payment payable by it to the Contractor.

i. If the Port Authority pays any installment to the Contractor without reducing said installment as provided in this Contract, it may reduce any succeeding installment by the proper amount, or it may bill the Contractor for the amount by which the installment paid should have been reduced and the Contractor shall pay to the Port Authority any such amount promptly upon receipt of the Port Authority's statement therefore.

j. The Port Authority shall also have the rights set forth above in the event the Contractor shall become insolvent or bankrupt or if his affairs are placed in the hands of a receiver, trustee or assignee for the benefit of creditors.

15. Sales or Compensating Use Taxes

Purchases of services and tangible personal property by the Port Authority in the States of New York and New Jersey are generally exempt from New York State, New Jersey State and federal taxes, as well as local sales and compensating use taxes; therefore the Port Authority is not subject to taxes on the services performed by the Contractor. However, the Port Authority's purchase of electricity from the Contractor under this Contract is subject to the utility tax as set forth in N.J.S.A. 54:32B-9(a)(1). Accordingly, the Contractor must include a calculation of the New Jersey utilities sales and use taxes in the price charged to the Port Authority under this Contract. The Contractor shall retain a copy of this Contract to substantiate the calculation of the New Jersey utility tax to be charged to the Port Authority.

The compensation set forth in this Agreement is the complete compensation to the Contractor, and the Port Authority will not separately reimburse the Contractor for any taxes unless specifically set forth in this Agreement.

16. No Estoppel or Waiver

The Port Authority shall not be precluded or estopped by any payment, final or otherwise, issued or made under this Contract, from showing at any time the true amount and character of the services performed, or from showing that any such payment is incorrect or was improperly issued or made; and the Port Authority shall not be precluded or estopped, notwithstanding any such payment, from recovering from the Contractor any damages which it may sustain by reason of any failure on its part to comply strictly with this Contract, and any moneys which may be paid to it or for its account in excess of those to which it is lawfully entitled.

No cancellation, rescission or annulment hereof, in whole or as to any part of the services to be provided hereunder, or because of any breach hereof, shall be deemed a waiver of any money damages to which the Port Authority may be entitled because of such breach. Moreover, no waiver by the Authority of any breach of this Contract shall be deemed to be a waiver of any other or any subsequent breach.

17. Records and Reports

The Contractor shall set up, keep and maintain (and shall cause its subcontractors to set up, keep and maintain) in accordance with generally accepted accounting practice during the term of this Agreement and any extensions thereof and for three years after the expiration, termination or revocation thereof, records, payroll records and books of account (including, but not limited to, records of original entry and daily forms, payroll runs, cancelled checks, time records, union agreements, contracts with health, pension and other third party benefit providers) recording all transactions of the Contractor(and its subcontractors), at, through or in any way connected with or related to the operations of the Contractor (and its subcontractors) hereunder, including but not limited to all matters relating to the charges payable to the Contractor hereunder, all wages and supplemental benefits paid or provided to or for its employees (and its subcontractors' employees) and such additional information as the Port Authority may from time to time and at any time require, and also including, if appropriate, recording the actual number of hours of service provided under the Contract, and keeping separate records thereof which records and books of account shall be kept at all times within the Port District. The Contractor shall permit (and cause its subcontractors to permit) in ordinary business hours during the term of this Agreement including any extensions thereof and for three years thereafter the examination and audit by the officers, employees and representatives of the Port Authority of such records and books of account and also any records and books of account of any company which is owned or controlled by the Contractor, or which owns or controls the Contractor if said company performs services similar to those performed by the Contractor anywhere in the Port District. However, if within the aforesaid three year period the Port Authority has notified the Contractor in writing of a pending claim by the Port Authority under or in connection with this Contract to which any of the aforesaid records and documents of the Contractor or of its subcontractors relate either directly or indirectly, then the period of such right of access shall be extended to the expiration of six years from the date of final payment with respect to the records and documents involved.

Upon request of the Port Authority, the Contractor shall furnish or provide access to the federal Form I-9 (Employment Eligibility Verification) for each individual performing work under this Contract. This includes citizens and noncitizens.

The Contractor (and its subcontractors) shall, at its own expense, install, maintain and use such equipment and devices for recording the labor hours of the service as shall be appropriate to its business and necessary or desirable to keep accurate records of the same and as the general manager or the Facility Manager may from time to time require, and the Contractor (and its subcontractors) shall at all reasonable times allow inspection by the agents and employees of the Port Authority of all such equipment or devices.

a. The Contractor hereby further agrees to furnish to the Port Authority from time to time such written reports in connection with its operations hereunder as the Port Authority may deem necessary or desirable. The format of all forms, schedules and reports furnished by the Contractor to the Port Authority shall be subject to the continuing approval of the Port Authority.
b. No provision in this Contract giving the Port Authority a right of access to records and documents is intended to impair or affect any right of access to records and documents which they would have in the absence of such provision. Additional record keeping may be required under other sections of this Contract.

18. General Obligations

a. Except where expressly required or permitted herein to be oral, all notices, requests, consents and approvals required to be given to or by either party shall be in writing and all such notices, requests, consents and approvals shall be personally delivered to the other party during regular business hours or forwarded to such party by United States certified mail, return receipt requested, addressed to the other party at its address hereinbefore or hereafter provided. Until further notice the Contractor hereby designates the address shown on the bottom of the Contractors Signature Sheet as their address to which such notices, requests, consents, or approvals may be forwarded. All notices, requests, consents, or approvals of the Contractor shall be forwarded to the Manager at the Facility.
b. The Contractor shall comply with the provisions of all present and future federal, state and municipal laws, rules, regulations, requirements, ordinances, orders and directions which pertain to its operations under this Contract and which affect the Contract or the performance thereof and those engaged therein as if the said Contract were being performed for a private corporation, except where stricter requirements are contained in the Contract in which case the Contract shall control. The Contractor shall procure for itself all licenses, certificates, permits or other authorization from all governmental authorities, if any, having jurisdiction over the Contractor's operations hereunder which may be necessary for the Contractor's operations. The Contractor's obligation to comply with governmental requirements are not to be construed as a submission by the Port Authority to the application to itself of such requirements.
c. The Contractor shall pay all taxes, license, certification, permit and examination fees and excises which may be assessed on its property or operations hereunder or income therefrom, and shall make all applications, reports and returns required in connection therewith.
d. The Contractor shall, in conducting its operations hereunder, take all necessary precautions to protect the general environment and to prevent environmental pollution, contamination, damage to property and personal injury.

19. Assignments and Subcontracting

a. The Contractor shall not sell, transfer, mortgage, pledge, subcontract or assign this Contract or any part thereof or any of the rights granted hereunder or any moneys due or to become due to it hereunder or enter into any contract requiring or permitting the doing of anything hereunder by an independent Contractor, without the prior written approval of the Port Authority, and any such sale, transfer,

mortgage, pledge, subcontract, assignment or contract without such prior written approval shall be void as to the Port Authority. The Port Authority shall have the option to assign this contract upon written approval from the Contractor, which shall not be unreasonably withheld.

b. All subcontractors who provide permanent personnel to the Contractor for work under this Contract shall be given written notice to comply with all requirements of the Contract. The Contractor shall be responsible and liable for the performance and acts of each subcontractor.

c. All persons to whom the Contractor sublets services shall be deemed to be its agents and no subletting or approval thereof shall be deemed to release this Contractor from its obligations under this Contract or to impose any obligations on the Port Authority to such subcontractor or to give the subcontractor any rights against the Port Authority.

20. Indemnification and Risks Assumed By The Contractor

To the extent permitted by law, the Contractor shall indemnify and hold harmless the Port Authority, its Commissioners, officers, representatives and employees from and against all claims and demands, just or unjust, of third persons (including Contractor's employees, employees, officers, and agents of the Port Authority) arising out of or in any way connected or alleged to arise out of or alleged to be in any way connected with the services to be provided under the Contract and all other services and activities of the Contractor under this Contract and for all expenses incurred by it and by them in the defense, settlement or satisfaction thereof, including without limitation thereto, claims and demands for death, for personal injury or for property damage, direct or consequential, whether they arise from the acts or omissions of the Contractor, the Port Authority, third persons(including Contractor's employees, employees, officers, and agents of the Port Authority), or from the acts of God or the public enemy, or otherwise, including claims and demands of any local jurisdiction against the Port Authority in connection with this Contract.

The Contractor assumes the following risks, whether such risks arise from acts or omissions (negligent or not) of the Contractor, the Port Authority or third persons (including Contractor's employees, employees, officers, and agents of the Port Authority)or from any other cause, excepting only risks occasioned solely by affirmative willful acts of the Port Authority done subsequent to the opening of proposals on this Contract, and shall to the extent permitted by law indemnify the Port Authority for all loss or damage incurred in connection with such risks:

a. The risk of claim, whether made against the Contractor or the Port Authority, for any and all loss or damages occurring to any property, equipment (including but not limited to automotive and/or mobile equipment), materials and possessions of the Contractor's agents, employees, materialmen and others performing work hereunder.

b. The risk of claims for injuries, damage or loss of any kind just or unjust of third persons arising or alleged to arise out of the performance of work hereunder, whether such claims are made against the Contractor or the Port Authority.

If so directed, the Contractor shall at its own expense defend any suit based upon any such claim or demand, even if such suit, claim or demand is groundless, false or fraudulent, and in handling such shall not, without obtaining 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 provision of any statutes respecting suits against the Port Authority.

Neither the requirements of the Port Authority under this Contract, nor of the Port Authority of the methods of performance hereunder nor the failure of the Port Authority to call attention to improper or inadequate methods or to require a change in the method of performance hereunder nor the failure of the Port Authority to direct the Contractor to take any particular precaution or other action or to refrain from doing any particular thing shall relieve the Contractor of its liability for injuries to persons or damage to

property or environmental impairment arising out of its operations.

21. Approval of Methods

Neither the approval of the Port Authority of the methods of furnishing services hereunder nor the failure of the Port Authority to call attention to improper or inadequate methods or to require a change in the method of furnishing services hereunder, nor the failure of the Port Authority to direct the Contractor to take any particular precautions or to refrain from doing any particular thing shall relieve the Contractor of its liability for injuries to persons or damage to property or environmental impairment arising out of its operations.

22. Modification of Contract

This Contract may not be changed except in writing signed by the Port Authority and the Contractor. The Contractor agrees that no representation or warranties shall be binding upon the Port Authority unless expressed in writing in this Contract.

23. Invalid Clauses

If any provision of this Contract shall be such as to destroy its mutuality or to render it invalid or illegal, then, if it shall not appear to have been so material that without it the Contract would not have been made by the parties, it shall not be deemed to form part thereof but the balance of the Contract shall remain in full force and effect.

24. Contract Records and Documents – Passwords and Codes

When the performance of the contract services requires the Contractor to produce, compile or maintain records, data, drawings, or documents of any kind, regardless of the media utilized, then all such records, drawings, data and documents which are produced, prepared or compiled in connection with this contract, shall become the property of the Port Authority, and the Port 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.

When in the performance of the contract services the Contractor utilizes passwords or codes for any purpose, at any time during or after the performance of such services, upon written request by the Authority, the Contractor shall make available to the designated Authority representative all such passwords and codes.

25. Confidential Information/Non-Publication

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

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 Contractor shall hold all such confidential information in trust and confidence for the Authority, and agrees that the Contractor and the personnel provided by the Contractor hereunder shall not, during or after the termination or expiration of this Contract, 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 Contract. The Contractor and the personnel provided by the Contractor 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 Contract. The Contractor and the personnel provided by the Contractor 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 Contractor 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 Contractor has knowledge, relating to any idea, design, method, material, equipment or other matter related to this Contract or coming to the Contractor's attention in connection with this Contract."

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

26. Time is of the Essence

Time is of the essence in the Contractor's performance of this Contract inasmuch as the Work to be performed will affect the operation of public facilities.

27. Personnel Standards

In addition to any specific personnel requirements that may be required under the clause entitled "Personnel Requirements" in the Specifications, the Contractor (and any Subcontractor) shall furnish competent and adequately trained personnel to perform the Work hereunder. If, in the opinion of the Manager, any employee so assigned is performing their functions unsatisfactorily, they shall be replaced by the Contractor within twenty-four (24) hours following the Contractor's receipt of the Manager's request for such replacement.

All Contractor's employees performing Work hereunder shall have the ability to communicate in the English language to the extent necessary to comprehend directions given by either the Contractor's supervisory staff or by the Manager's staff. Any employee operating a motor vehicle must have a valid driver's license.

The Contractor shall verify that employees working under this Contract in the United States are legally present in the United States and authorized to work by means of the federally required I-9 program

28. Manager's Authority

In the performance of the Work hereunder, the Contractor shall conform to all orders, directions and requirements of the Manager and shall perform the Work hereunder to the satisfaction of the Manager at such times and places, by such methods and in such manner and sequence as he/she may require, and the Contract shall at all stages be subject to his/her inspection. The Manager shall determine the amount, quality, acceptability and fitness of all parts of the Work and shall interpret the Specifications and any orders for Extra Work. The Contractor shall employ no equipment, materials, methods or staff or personnel to which the Manager objects. Upon request, the Manager shall confirm in writing any oral order, direction, requirement or determination.

The Manager shall have the authority to decide all questions in connection with the Services to be performed hereunder. The exercise by the Manager of the powers and authorities vested in him/her by this section shall be binding and final upon the Port Authority and the Contractor.

29. Price Preference

If this solicitation has not been set aside for the purposes of making an award based on bids solicited from Port Authority certified Minority Business, Women Business or Small Business Enterprises as indicated by the bidder pre-requisites in Part II hereof, for awards of contracts, not exceeding $1,000,000, for:

(a) Services, a price preference of 5% is available for New York or New Jersey Small Business Enterprises (SBE); or

(b) Services (excluding Janitorial/Cleaning Services), a price preference of 10% is available for New York or New Jersey Minority or Women Business Enterprises (M/WBE),

certified by the Port Authority by the day before the bid opening.

If the Bidder is a Port Authority certified MBE, WBE or SBE, enter the applicable date(s) certification was obtained in the space provided on the Signature Sheet attached hereto.

30. M/WBE Good Faith Participation

If specified as applicable to this Contract, the Contractor shall use every good-faith effort to provide for participation by certified Minority Business Enterprises (MBEs) and certified Women-owned Business Enterprises (WBEs) as herein defined, in all purchasing and subcontracting opportunities associated with this Contract, including purchase of equipment, supplies and labor services.

Good Faith efforts to include participation by MBEs/WBEs shall include the following:

a. Dividing the services and materials to be procured into small portions, where feasible.

b. Giving reasonable advance notice of specific contracting, subcontracting and purchasing opportunities to such MBEs/WBEs as may be appropriate.

c. Soliciting services and materials from a Port Authority certified MBE/WBE or seeking MBEs/WBEs from other sources. To access the Port Authority's Directory of MBE/WBE Certified Firms go to www.panynj.gov/supplierdiversty

d. Ensuring that provision is made to provide progress payments to MBEs/WBEs on a timely basis.

e. Observance of reasonable commercial standards of fair dealing in the respective trade or business.

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 Diversity and Civil Rights. For submittal of modifications to the M/WBE Plan, Contractors are directed to use form PA3749C, 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 Contractor shall also submit to the Manager, along with invoices, the Statement of Subcontractor Payments as the M/WBE Participation Report, which may be downloaded at http://www.panynj.gov/business-opportunities/become-vendor.html. 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 Contractor's compliance with the foregoing provisions.

If, during the performance of this Contract, the Contractor fails to demonstrate good faith efforts in carrying out its M/WBE Participation Plan and the Contractor 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 Contractor's failure to carry out its M/WBE Participation Plan in its evaluation for award of future Authority contracts.

PART III CONTRACTOR'S INTEGRITY PROVISIONS

1. Certification of No Investigation (criminal or civil anti-trust), Indictment, Conviction, Debarment, Suspension, Disqualification and Disclosure of Other Information

By bidding on this Contract, each Bidder and each person signing on behalf of any Bidder certifies, and in the case of a joint bid each party thereto certifies as to its own organization, that the Bidder and each parent and/or affiliate of the Bidder has not

a. been indicted or convicted in any jurisdiction;
b. been suspended, debarred, found not responsible or otherwise disqualified from entering into any contract with any governmental agency or been denied a government contract for failure to meet standards related to the integrity of the Bidder;
c. had a contract terminated by any governmental agency for breach of contract 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 Bid;
e. had any business or professional license suspended or revoked or, within the five years prior to bid 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, bid 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.

2. Non-Collusive Bidding, and Code of Ethics Certification, Certification of No Solicitation Based On Commission, Percentage, Brokerage, Contingent or Other Fees

By bidding on this Contract, each Bidder and each person signing on behalf of any Bidder certifies, and in the case of a joint bid, each party thereto certifies as to its own organization, that

a. the prices in its bid 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 bidder or with any competitor;
b. the prices quoted in its bid have not been and will not be knowingly disclosed directly or indirectly by the Bidder prior to the official opening of such bid to any other bidder or to any competitor;
c. no attempt has been made and none will be made by the Bidder to induce any other person, partnership or corporation to submit or not to submit a bid for the purpose of restricting competition;
d. this organization has not made any offers or agreements or taken any other action with respect to any Authority employee or former employee or immediate family member of either which

would constitute a breach of ethical standards under the Code of Ethics dated April 11, 1996, (a copy of which is available upon request to the individual named in the clause hereof entitled "Bidder'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 Bidder for the purpose of securing business, has been employed or retained by the Bidder to solicit or secure this Contract on the understanding that a commission, percentage, brokerage, contingent, or other fee would be paid to such person or selling agency; and

f. the bidder 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 Contract.

The foregoing certifications shall be deemed to be made by the Bidder as follows:

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

Moreover, the foregoing certifications, if made by a corporate Bidder, shall be deemed to have been authorized by the Board of Directors of the Bidder, and such authorization shall be deemed to include the signing and submission of the bid and the inclusion therein of such certification as the act and deed of the corporation.

In any case where the Bidder cannot make the foregoing certifications, the Bidder shall so state and shall furnish with the signed bid a signed statement which sets forth in detail the reasons therefor. If the Bidder is uncertain as to whether it can make the foregoing certifications, it shall so indicate in a signed statement furnished with its bid, setting forth in such statement the reasons for its uncertainty. As a result of such disclosure, the Port 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 Bidder may be able to make the foregoing certifications at the time the bid is submitted, the Bidder shall immediately notify the Authority in writing during the period of irrevocability of bids on this Contract 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 Bidder 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 Contract. In the event that the Authority should determine at any time prior or subsequent to the award of this Contract that the Bidder 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 Bidder is not a responsible Bidder with respect to its bid on the Contract or with respect to future bids on Authority contracts and may exercise such other remedies as are provided to it by the Contract with respect to these matters. In addition, Bidders 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.). Bidders are also advised that the inability to make such certification will not in and of itself disqualify a Bidder, and that in each instance the Authority will evaluate the reasons therefor provided by the Bidder. Under certain circumstances the Bidder may be required as a condition of Contract 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 Port Authority, said Monitor to be charged with, among other things, auditing the actions of the Bidder to determine whether its business practices and relationships indicate a level of integrity sufficient to permit it to continue business with the Port Authority.

3. Bidder Eligibility for Award of Contracts - Determination by an Agency of the State of New York or New Jersey Concerning Eligibility to Receive Public Contracts

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

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

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

4. No Gifts, Gratuities, Offers of Employment, Etc.

During the term of this Contract, the Contractor shall not offer, give or agree to give anything of value either to a Port Authority employee, agent, job shopper, consultant, construction manager or other person or firm representing the Port 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 Port Authority of duties involving transactions with the Contractor on behalf of the Port Authority, whether or not such duties are related to this Contract or any other Port Authority contract or matter. Any such conduct shall be deemed a material breach of this Contract.

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 Contract or any other Port Authority contract), etc. which might tend to obligate the Port Authority employee to the Contractor, 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 Contract or any other Port Authority contract. Where used herein, the term "Port Authority" shall be deemed to include all subsidiaries of the Port Authority.

The Contractor 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 Contract, the Contractor shall not make an offer of employment or use confidential information in a manner proscribed by the Code of Ethics and Financial Disclosure dated April 11, 1996, (a copy of which is available upon request to the Office of the Secretary of the Port Authority).

The Contractor shall include the provisions of this clause in each subcontract entered into under this Contract.

5. Conflict of Interest

During the term of this Contract, the Contractor shall not participate in any way in the preparation, negotiation or award of any contract (other than a contract for its own services to the Authority) to which it is contemplated the Port Authority may become a party, or participate in any way in the review or resolution of a claim in connection with such a contract if the Contractor has a substantial financial interest in the contractor or potential contractor of the Port Authority or if the Contractor has an arrangement for future employment or for any other business relationship with said contractor or potential contractor, nor shall the Contractor 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 Contractor has reason to believe such an arrangement may be the subject of future discussion, or if the Contractor has any financial interest, substantial or not, in a contractor or potential contractor of the Authority, and the Contractor's participation in the preparation, negotiation or award of any contract with such a contractor or the review or resolution of a claim in connection with such a contract is contemplated or if the Contractor has reason to believe that any other situation exists which might be viewed as or give the appearance of a conflict of interest, the Contractor shall immediately inform the Director in writing of such situation giving the full details thereof. Unless the Contractor receives the specific written approval of the Director, the Contractor 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 Contractor of a portion of its Services under this Agreement is precluded by the provisions of this numbered paragraph, or a portion of the Contractor'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 Contractor's Services not be performed by the Contractor, 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 Contractor's execution of this document shall constitute a representation by the Contractor that at the time of such execution the Contractor 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 Contractor's part. The Contractor 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 contract which results, directly or indirectly, from the Services provided by the Contractor hereunder.

6. Definitions

As used in this section, 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 Bidder by whatever titles known.

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

If the solicitation is a Request for Proposal:

Bid - shall mean Proposal;
Bidder - shall mean Proposer;
Bidding - shall mean submitting a Proposal.

In a Contract resulting from the taking of bids:

Bid - shall mean bid;
Bidder - shall mean Bidder;
Bidding - shall mean executing this Contract.

In a Contract resulting from the taking of Proposals:

Bid - shall mean Proposal;
Bidder - shall mean Proposer;
Bidding - shall mean executing this Contract.

THE PORT AUTHORITY OF NY & NJ

PROCUREMENT DEPARTMENT
2 MONTGOMERY STREET, 3RD FL.
JERSEY CITY, NJ 07302

9/7/2012

ADDENDUM # 4

To prospective Respondent for Request for Prequalification Information # 30311 to Provide Electric Generation Services at Selected NY & NJ Facilities of the Port Authority of NY & NJ:

Due back on 9/14/2012, no later than 2:00PM

I. CHANGES/MODIFICATIONS

The following changes/modifications are hereby made to the solicitation documents:

1. In reference to Part III, section 3, Billing, paragraph e, in the third line after, "awarded Contract," insert "subject to adjustments permitted by the contract,".

2. In reference to Part III section 3, Billing, paragraph g, delete in its entirety and replace with the following:

"The Contractor(s) will be responsible for all costs, including, but not limited to, applicable taxes associated with the supply of Electric Generation Service. In no event shall the Contractor(s) adjust the amounts it charges the Port Authority or assess any additional charges based on any additional unforeseen or unanticipated costs it may incur, except for changes in the applicable State Sales and Use Tax that become effective during the term of the Contract. In addition, if after the Port Authority has notified Contractor that it is the winning Bidder for particular Port Authority Account(s) or Account Groups, a new Law, as defined below, shall be enacted, or there shall occur any amendments to any Law (including without limitation those that establish new or otherwise modify existing and alternative resource adequacy requirements or renewable portfolio standards or that impose new taxes or change the rate of existing taxes), in either circumstance affecting approved rates, tariffs, taxes, charges, fees, assessments, or other costs relating to the licensing, supply, generation, transmission or distribution of electric power and/or energy directly affecting the anticipated economic return to Contractor of supplying electricity to the Port Authority under this Contract (any of the foregoing a "Change in Law"), Contractor shall send a written notice to the Port Authority at least thirty (30) days prior to the implementation of the Change in

Law explaining how such Change in Law will directly affect the cost of supplying electricity to the Port Authority under this Contract and including an explanation of its calculation of how such Change in Law would affect amounts payable by the Port Authority to the Contractor under this Contract. In such written notice to the Port Authority, the Contractor shall explain Contractor's calculation of how Contractor's costs will actually increase or decrease under this Contract, as applicable, as a result of such Change in Law. If such Change in Law will directly affect Contractor's cost of supplying electricity to the Port Authority under this Contract, the Port Authority will confirm its acceptance of same by written notice to the Contractor within thirty (30) days of receipt of notification. The amounts payable by the Port Authority shall be accordingly adjusted upward or downward to take into account such changed economic consequences, and such amounts shall be included in subsequent invoices. In the case of downward adjustments, the Port Authority will be granted a credit against amounts owed to Contractor under future monthly invoices, or shall be issued a refund if no future monthly payments by the Port Authority are payable. For purposes of this paragraph only, "Law" shall mean any law, rule, regulation, ordinance, statute, judicial decision, administrative order, applicable EDC operating guideline or protocol, utility or applicable EDC tariff, rule of the public utilities commission, public service commission, independent system operator, regional transmission organization or similar state commission or agency having jurisdiction over utilities, the Parties, electricity transactions and the electricity transmission or distribution systems under which authority the Account(s) are located"

3. In reference to Part III, section 7, Increase and Decrease in Number of Accounts, paragraph a, delete in its entirety and replace with the following:

"After award of the Contract to Contractor, the Port Authority reserves the right to increase or decrease the number of Accounts within an Account Group, at the contracted price under the same terms and conditions as applicable under this Contract, provided that the aggregate annual usage of all additional Accounts does not exceed, or with respect to deleted Accounts is less than the specified percentage of the contracted amount for the relevant Account Group as listed in Appendix I. This percentage is specified in Appendix 1."

4. In reference to Part III, section 7, Increase and Decrease in Number of Accounts, paragraph b, in the second sentence, change "thirty (30) days" to "forty-five (45) days.

5. In reference to Part V Specifications, section 1a, Specific Definitions, Adjusted Market Cost, delete in its entirety and replace with:

"Adjusted Market Cost ($): In the case of an Account Group consuming more kWh than the Maximum Monthly Consumption Amount, the following formula will be used to calculate the adjusted cost:

[(Consumption During Billing Period) – (Maximum Monthly Consumption Amount)] x (Spot Energy Price)

In the case of an Account Group consuming less kWh than the Minimum Monthly Consumption Amount, the following formula will be used to calculate the adjusted cost:

[(Minimum Monthly Consumption Amount) – (Consumption During Billing Period)] x [(Contract Rate) – (Spot Energy Price)]"

6. In reference to Part V, Specifications, add the following definition at the end:

"Spot Energy Price" means the weighted average (weighted in accordance with the account's hourly consumption or utility rate class consumption profile) of the applicable market clearing price for balancing energy, as posted by the ISO for the applicable delivery point. The Spot Energy Price shall also include all non-utility charges arising from uplifts, ancillary services, losses, congestion, and other ISO charges or administrative fees incurred in connection with delivery of energy.

7. In reference to the Standard Contract Terms and Conditions, section 14. Default, Revocation or Suspension of Contract, paragraph b, second to last sentence, change "…the Port Authority shall have the right upon five (5) days notice to the Contractor to terminate this Contract…" to read as follows, "…the Port Authority shall have the right upon thirty (30) days notice to the Contractor to terminate this Contract…".

8. In reference to Part V, section 1b, remove paragraph 1in its entirety and replace with:

> "1. **Firm, Fixed Price Electric Generation Service:** Bids for this Account Group should consist of a single price per kWh for Electric Generation Service. Firm, fixed prices for all Accounts in the State of New York and the State of New Jersey should include all services and products necessary to provide firm delivery of energy to the Port Authority for all kilowatt-hours ("kWh") metered by the EDC, including but not limited to commodity energy, capacity charges, transmission charges, ancillary services, RPS (if applicable), line losses and WES procurement fee. RMR should be treated as a pass through. Bids should include all applicable state sales and use taxes."

II. BIDDER'S QUESTIONS AND ANSWERS

The following information is available in response to questions submitted by prospective Bidders. The responses should not be deemed to answer all questions, which have been submitted by Bidders to the Port Authority. It addresses only those questions, which the Port Authority has deemed to require additional information and/or clarification. The fact that information has not been supplied with respect to any questions asked by a

Bidders does not mean or imply, nor should it be deemed to mean or imply, any meaning, construction, or implication with respect to the terms.

The Port Authority makes no representations, warranties or guarantees that the information contained herein is accurate, complete or timely or that such information accurately represents the conditions that would be encountered during the performance of the Contract. The furnishing of such information by the Port Authority shall not create or be deemed to create any obligation or liability upon it for any reason whatsoever and each Bidder, by submitting its Bid, expressly agrees that it has not relied upon the foregoing information, and that it shall not hold the Port Authority liable or responsible therefore in any manner whatsoever. Accordingly, nothing contained herein and no representation, statement or promise, of the Port Authority, its Commissioners, officers, agents, representatives, or employees, oral or in writing, shall impair or limit the effect of the warranties of the Bidder required by this Bid or Contract and the Bidder agrees that it shall not hold the Port Authority liable or responsible therefore in any manner whatsoever.

Q1: Please clarify how the Port Authority will allow suppliers to adjust for additional costs incurred due to changes in customer capacity and transmission obligations throughout the term of the contract.
A1: The Port Authority will not allow for those adjustments for the Firm, Fixed Pricing product nor for the Index – Fixed Adder pricing products. Please see Q7 in Addendum 2.

Q2: Is Consolidated billing acceptable?
A2: Dual billing is preferred. However, Consolidated billing will be allowed. Please see Q14 in Addendum 2.

Q3: What summary reports are required?
A3: For Dual billing: The Contractor(s) shall be required to prepare and submit to the Port Authority a single monthly billing invoice ("Summary Billing") for each Account Group covered by the Contract awarded under this bid. Each such monthly Summary Billing invoice shall list separately each of the individual accounts included within each of the Account Group covered by the Contract and shall provide the number of kilowatt-hours of usage and the appropriate unit prices for each such account. The Contractor shall forward an original invoice by mail and one electronic copy of said invoice by e-mail to the Port Authority as follows:

> (i) One original copy by mail to:
> Office of Environmental and Energy Programs
> The Port Authority of New York and New Jersey
> 225 Park Avenue South, 11th Floor
> New York, New York 10003
>
> (ii) One electronic copy by mail to: (email address(s) will be provided upon contract award)

For Consolidated billing: The Contractor(s) shall be required to prepare and submit to the Port Authority a single monthly summary report for each Account Group covered by the Contract awarded under this bid. Each such monthly summary report shall list separately each of the

individual accounts included within each of the Account Group covered by the Contract and shall provide the number of kilowatt-hours of usage and the appropriate unit prices for each such account. The Contractor shall forward an original report by mail and one electronic copy of said report by e-mail to the Port Authority as follows:

> (i) One original copy by mail to:
> Office of Environmental and Energy Programs
> The Port Authority of New York and New Jersey
> 225 Park Avenue South, 11th Floor
> New York, New York 10003
>
> (ii) One electronic copy by mail to: (email address(s) will be provided upon contract award)

Q6: In Exhibit 1 and throughout the solicitation including in Part V, 1a. settlements of usage over/under the bandwidth requirements are referenced for fixed price bids. It is recommended that fixed price bids be all-inclusive, without bandwidth restrictions that require adjustments to be made based on changes in usage patterns.
A6: Suppliers bidding on the Firm, Fixed Price accounts must apply a minimum of a 25% bandwidth. A bandwidth larger than 25% is permissible. If the supplier is offering more than 25% bandwidth, the supplier should indicate this in its prequalification response. Furthermore, if a supplier wishes to only apply the 25% bandwidth for over-usage and would like to apply a larger bandwidth for under-usage, this is acceptable as well so long as the supplier indicates this in its prequalification response. The Port Authority will not remove the 25% bandwidth from the Firm, Fixed Price; however, a supplier will not be prohibited from bidding if it wishes to apply a larger bandwidth.

Q7: Please clarify "applicable EDC delivery point" referenced in Part III, section 8.
A7: The Delivery Point is the point on the electric system at which the EDC takes possession of the electricity for final delivery of the electricity to the meter(s) of the specific facilities. This same Delivery Point shall be where the facility takes title to the electricity.

Q8: In Part III, Section 9, Force Majeure, please clarify the Port Authority's expectation of this section.
A8: The Force Majeure language in the solicitation does not limit Force Majeure events to utility and ISO Force Majeure events. Rather, it incorporates by reference the utilities' descriptions of a *Force Majeure Event*. So, for accounts in PSE&G, events include:

> [I]n the event that either Party is delayed in or prevented from performing or carrying out its obligations under this Agreement by reason of an event of Force Majeure which by the exercise of due diligence and foresight the Party could not reasonably have been expected to avoid and which by the exercise of due diligence the Party is unable to overcome, such Party shall not be liable to the other Party for or on account of any loss, damage, injury or expense resulting from or arising out of such delay or prevention; provided, however, that the Party encountering such delay or prevention shall give the other Party prompt notice thereof and shall use due diligence to remove the cause or causes thereof. Events of Force Majeure include a catastrophic weather condition, flood, fire, lightning, epidemic, quarantine, war, sabotage, act of a public enemy, earthquake, insurrection, riot, civil disturbance, strike, or restraint by court order or public

> authority, action or non-action by or inability to obtain authorization or approval from any governmental or other authority. The settlement of strikes and labor disturbances shall be wholly within the sole discretion of the Party experiencing that difficulty. Economic hardship of either Party shall not constitute a Force Majeure under this Agreement.

For accounts in Central Hudson, events include:

> [A]cts of God, fire, terrorism, war (declared or undeclared), epidemics, material and/or labor shortages, insurrection, acts (or omissions) of Contractor's or its employees, servants, subcontractors, suppliers or agents, any act (or omission) by any governmental authority, strikes (includes strikes by owner's employees, by third-party owners, third-parties, servants, principals, subcontractors and/or agents), labor disputes, transportation, material and/or labor shortages, or vendor non-performance.

Q9: Standard Contract Terms and Conditions, page 15 of 20, section 30: In light of the words "If specified as applicable to this Contract", please clarify if MBE/WBE participation is applicable to this contract.
A9: Yes, M/WBE good faith participation is applicable.

Q10: If a supplier uses a consolidated bill method in NJ for fixed price accounts, the EDC payment terms will prevail. The supplier will also bill on usage that PSEG provides. Is this acceptable?
A10: Yes. Please note: if a supplier wishes to use consolidated billing, it must indicate this in its technical response. Additionally, please see A3 above in this Addendum 4 and Q14 in Addendum 2.

Q11: The addition and deletion of account #s during the term of the agreement by tranche is not to exceed a certain %, the price will be at the contract rate, is it possible to adjust that price due to market conditions at a mutually acceptable rate?
A11: No, the point of the requirement is to allow the Port Authority to add a limited amount of accounts at the same contract rate. However, any additions or deletions outside of the specified percentage will be accomplished through mutually agreed upon pricing.

Q12: Is it possible to withdraw our bid prior to an award if the market moves at all?
A12: No. Bids may only be withdrawn under the specific market conditions discussed in Part IV, section 1.

Q13: Understanding the NJ Solar Bill passed in July 2012 will take effect June 2013, does the Port Authority expect the new RPS requirements to be priced and included in the auction rates to be awarded?
A13: Yes.

Q14: If an index product is included in the auction how will the Changes to Capacity and Transmission PLCs and Rates be billed?

A14: The Supplier shall take all the risk for any Capacity and Transmission PLCs changes except for those pricing products where capacity and transmission are treated as pass-thrus. Please refer to Addendum 2, items 1 and 2.

Q15: Will the WES fee of $0.0009/kWh be applied to all bids and accounts added to the agreement?
A15: The WES fee should be included in your bid price. Additionally, the WES fee will apply to accounts added throughout the contract term.

Q16: Should RMR be fixed or treated as a pass-through?
A16: RMR should be treated as a pass-through for all pricing products. Please see item 8, above.

Q17: Please confirm that the prices the supplier is submitting in response to this solicitation will not include any costs related to recent legislation pursuant to FERC Order 745. FERC Order 745 directs each organized market operator (in New Jersey, PJM, and in New York, NYISO) to institute incentive payments for demand response resources that curtail energy consumption in wholesale energy markets. The incentive payment structure provides that demand response resources will be paid the prevailing locational marginal price ("LMP"). The final FERC rule indicates that those customers benefiting from the reduced LMP as a result of demand response should be assessed the costs of the increased compensation to demand response resources. Supplier will pass these costs, if any, directly through to Port Authority.
A17: Confirmed.

Q18: Please clarify how suppliers should handle Auction Revenue Rights (ARRs) and Transmission Loss Credits (TLCs).
A18: If a supplier has ARRs and/or TLCs, this should be reflected in the supplier's bid prices. ARRs and TLCs will not be treated as a pass-through.

Q19: Should Supplier be awarded Accounts under this solicitation, will Port Authority require a Guaranty from Supplier's parent?
A19: If any guaranty is required, it will be resolved prior to the auction.

Q20: Does Port Authority have any plans for co-generation? Are there plans to participate in any demand response (curtailment) or efficiency programs during the contract period? If so, please provide the estimated load shed amount for each participating account.
A20: The Port Authority intends to provide a schedule of potential consumption changes to pre-qualified suppliers prior to Auction Day.

Q21: Please clarify whether the "Option Period(s)" in Part II, Section 7 will be accomplished through mutual agreement or the Port Authority's unilateral decision.
A21: The pricing for any options periods will be mutually agreed upon by the supplier and the Port Authority. See Part II, section 7, Option Period(s).

Q23: Will the Port Authority be providing any credit assurances?

A23: No. A copy of the Port Authority's annual report and financial statements is available online at www.panynj.gov.

Q24: Will the Port Authority represent and warrant to supplier throughout the term of this Agreement that the facility(s) listed on Attachment A, Exhibit 1 are owned, occupied or operated by Customer as part of Customer's commercial activities notwithstanding that a meter or account may be classified by the applicable utility as a residential account?
A24: Yes.

Q25: Would the Port Authority allow for an email notification that the invoice has been generated and can be retrieved from the supplier's Customer Service Center Site?
A25: No.

Q26: Would the Port Authority allow the Supplier to submit a Federal Tax Form as a blanket to cover the requirement of populating the Tax ID number on each invoice?
A26: No.

Q27: In Part III, section 7, paragraph a, Increase and Decrease in Number of Accounts, will the Port Authority consider changing the term "aggregate usage" to "aggregate annual usage"?
A27: Please see item 3, above, in Changes/Modifications

Q28: In Part III, Section 7 b), Increase and Decrease in Number of Accounts, can the Port Authority provide clarity around the timeframes for add-ons? If the Port Authority provides information 30 days before flow date and we have 15 days to present a price, after contracting and price acceptance, this does not leave enough time for enrolment in NJ.
A28: Please see item 4, above in Changes/Modifications.

Q29: Will the Port Authority consider other means to pull a price rather than being dependent on WES to confirm Market Movement?
A29: No.

Q30: If the Supplier has an existing contract with WES, can the Supplier pay the procurement fee per the terms of the existing contract?
A30: No.

Q31: Will the Port Authority accept multiple billing periods on one invoice if a Supplier cannot bill or pro-rate on calendar month?
A31: The Port Authority will accept multiple meter reads on one invoice. The Port Authority is not requiring that suppliers pro-rate on calendar month. The Port Authority does, however, ask that suppliers put all monthly meter-reads on the same summary invoice/report. E.g. A supplier wins an account group with three accounts in it and their meter reads are:

Account 1 – January 1
Account 2 – January 6
Account 3 – January 13

When the summary invoice/report is delivered to the Port Authority, all three of those accounts should be on the summary invoice/report.

Q32: Will the Port Authority allow the Supplier to assign the agreement if such assignment rights are conditioned upon the prior written consent of the Port Authority?
A32: Please see Standard Contract Terms and Conditions, section 19, Assignments and Subcontracting.

Q33: In Part III, Section 3, Billing, paragraph b, – Contract Specific Terms and Conditions it states that "Payment will be made within thirty (30) days of Port Authority verification of the invoice." Please provide the average amount of time it takes for the Port Authority to verify the invoice, what is involved in verification, and whether the Contractor will receive a notice that the Port Authority has verified the invoice.
A33: The average amount of time it takes to verify an invoice is roughly 15 – 20 days depending on the number of accounts involved in the account group. The Contractor will not receive a notice that the Port Authority has verified the invoice; instead, the Contractor will simply receive payment.

Q34: In Part III, Section 3 f) – Contract Specific Terms and Conditions it states that "The quantities of electricity set forth in the . . . invoices rendered by the Contractor applicable to any Billing Period shall be final and conclusive." Contractor relies on the EDC to read meters and provide Contractor with the data on the quantities of electricity consumed. Please confirm that if the Contractor has not received actual meter read data from the EDC by the time invoices must be prepared that the Contractor may use estimated data and then provide a corrected invoice at a later date.
A34: Yes.

Q35: In Part III, Section 3(g) – Contract Specific Terms and Conditions (Taxes), is the applicable State Sales and Use Tax referred to in this Section the same as the "utility tax as set forth in N.J.S.A. 54:32B-9(a)(1)" that is referenced in Section 15 of the Standard Contract Terms and Conditions?
A35: Yes.

Q36: In the Standard Contract Terms and Conditions, Section 14 a), this section permits the Port Authority to "revoke this Contract" if all or a substantial part of "the Facility" is destroyed or if the government condemns or takes all or a substantial part of "the Facility." The Contract between Contractor and the Port

Authority will cover a number of accounts and locations. Is it the Authority's intention that if any portion of any of those locations is destroyed or taken that the Authority may revoke the entire Contract?
A36: No.

Q37: Standard Contract Terms and Conditions Section 15: Will the Port Authority provide certificates of tax exemption to the successful Contractor?
A37: Appropriate information will be forwarded to the successful Contractor to show Port Authority tax exempt status.

Q38: If a supplier requires the ability to assign, without consent, in connection with any financing or other financial arrangements involving the assignment, sale, pledge, or encumbering of this agreement or its accounts, revenues or proceeds, will the Port Authority agree to permit this assignment?
A38: Please see Standard Contract Terms and Conditions, section 19, Assignments and Subcontracting.

Q39: Standard Contract Terms and Conditions Section 30: Regarding the M/WBE language of the RFP, are there any energy supply requirements?
A39: It is a good faith effort.

Q40: Please provide a copy of the Code of Ethics dated April 11, 1996 and the Code of Ethics and Financial Disclosure dated April 11, 1996 referred to in Standard Contract Terms and Conditions Part III Section 2(d), and Section 4 respectively.
A40: See Port Authority website at www.panynj.gov.

Q41: Will the Port Authority add in a material change clause?
A41: No. However, the Port Authority is requesting mostly index pricing products. Furthermore, for the firm, fixed pricing product, the Port Authority is requesting a 25% bandwidth. Finally, the Port Authority endeavors to notify supplier well in advance of anticipated accounts changes.

Q42: In reference to Section 7 and Section 14 of the Standard Contract Terms and conditions: Notwithstanding Section 7's prohibition against cancellation of the Agreement by the Contractor, will the Port Authority permit Contractor to terminate the agreement if the Port Authority does not make payments that would compensate Contractor for any damages?
A42: No.

Q43: "Adjusted Market Cost" definition in Part V – Specifications of the solicitation: Would the Port Authority agree to revise the formula when an Account Group consumes more than the Maximum Monthly Consumption Amount to multiply the excess consumption by the difference between the Load Weighted Average of On-Peak Real-Time LMPs and the Contract Price? Also, would the Port Authority agree to revise the formula when an Account Group consumes less than the Minimum Monthly Consumption Amount to multiply the deficient consumption

by the difference between the Contract Price and the Load Weighted Average of Real-Time LMPs?
A43: Please see above in this Addendum 4, Part I, Changes/Modifications.

Q44: Part III – Contract Specific Terms and Conditions – Section 3(e) –. For certain pricing products, the Port Authority is requesting that suppliers pass through line losses. Supplier passes through line losses for PJM products by using the formula of "Actual Consumption x Loss Factor x (1 – PJM Marginal Loss De-ration Factor)". Can you please confirm that this formula is acceptable for all PJM products that request line losses to be passed through and that it does not conflict with this section? For NY, since there is no de-ration factor, the formula is "Actual Consumption x Loss Factor", however, the same question would apply as to whether or not this contradicts this same section of the solicitation.
A44: These formulas are acceptable for those pricing products where the Port Authority is requesting that line losses be passed through.

Q45: Supplier uses the spot market for calculating pass-through capacity prices in New York. Is this acceptable to the Port Authority?
A45: Yes.

Q46: Are 2 summary reports, one for NJ sites and one for NY sites, acceptable to the Port Authority?
A46: Summary invoices/reports should be divided by account group. Since NY and NJ accounts are not intermingled in any account group, no summary invoices/reports will have both NY and NJ accounts on them.

Q47: Can the Port Authority specify a reasonable period to cure as a result of audit findings before payments may be deducted from subsequent monthly payments.
A47: No.

Q48: If a supplier serves customers in NY and NJ through two separate entities will that be acceptable?
A48: Yes.

Q49: If the RPS is not a competitive component, but rather charged by the applicable EDC, as the case may be in NY, is it correct that suppliers are not required to comply with RPS or build it into their prices?
A49: Correct.

Q50: Please define summary bill.
A50: Please see Part III Section 3 a).

Q51: Please clarify what is to be bid for the index product.
A51: Please see Addendum 2, Part I, Changes/Modifications.

Q52: Please clarify what was discussed on the bidder's conference call regarding Capacity and Transmission.
A52: Please see Addendum 2, A7.

Q53: Please indicate if the Port Authority is amenable to a confidential alternative arrangement for privately held energy supply firms to arrange viewing of their Financial Statements.
A53: The Port Authority may inquire the supplier's financial information and will discuss the process at that time.

Q54: In reference to Standard Contract Terms and Conditions, Section 19. Assignments and Subcontracting, is Port Authority amenable to adding a caveat that supplier is able to assign revenues, proceeds and accounts receivable to credit provider without consent?
A54: No. However, please see above in this Addendum 4, A32.

Q55: In reference to Standard Contract Terms and Conditions, Section 20. Indemnification and Risks Assumed by the Contractor, is the Port Authority amenable to paragraph a becoming mutual? And, under paragraph b, due to nature of contracted services would the Port Authority be amenable to this paragraph b being stricken as it as does not apply to services performed?
A55: No. Language remains unchanged for both questions.

Q56: Part III Contract Specific Terms and Conditions, section 6, Contractor Performance, paragraph d suggest delete that section in its entirety.
A56: No. Language remains unchanged.

Q57: Standard Contract Terms and Conditions, page 3 of 20, Part I, General Definitions, "Subcontractor": Please clarify that a Subcontractor is any party, at any tier, that provides goods and services to the Contractor in the direct performance of the contract. A subcontractor does not include government regulated organizations or the regulated commodity, such as the ISO, RTO, Renewable Energy Credit provider, EDC, or the regulated commodity wholesaler.
A57: No further clarification will be provided.

Q58: Standard Contract Terms and Conditions, page 5 of 20 and pages 7 through 9 of 20, sections 6, 7 and 14: It is unclear how these provisions interrelate. These sections do not detail the specific calculation under which the supplier would be liable for breach. These sections do not detail the events that the Port Authority may experience. Please provide an equitable list of defaults and a liquidated damages formula.
A58: No further clarification will be provided.

Q59: Standard Contract Terms and Conditions, page 14 of 20, section 28: Given the solicitation is intended to provide all details a Contractor needs to perform, it is

difficult for a supplier to follow other directives of the Manager, as it would be impossible for a potential supplier to anticipate requests and price accordingly. Please revise language.
A59: Language will remain unchanged.

This communication should be initialed by you and annexed to your Response upon submission.

In case any Respondent fails to conform to these instructions, its Response will nevertheless be construed as though this communication had been so physically annexed and initialed.

THE PORT AUTHORITY OF NY & NJ

KATHY LESLIE WHELAN, MANAGER
COMMODITIES & SERVICES DIVISION

RESPONDENT'S FIRM NAME: _____

INITIALED: _____

DATE: _____

QUESTIONS CONCERNING THIS ADDENDUM MAY BE ADDRESSED TO
Mr. Richard A. Grehl, WHO CAN BE REACHED AT (201) 395-3441 or at rgrehl@panynj.gov.