

Daniel D. Duffy
FOI Administrator

August 19, 2013

Ms. Ellen Kapitan
Integrus Energy Services of NY
3556 Lake Shore Road, Suite 420
Buffalo, NY 14219

Re: Freedom of Information Reference No. 14093

Dear Ms. Kapitan:

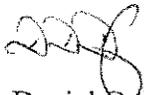
This is a response to your June 26, 2013 request, which has been processed under the Port Authority's Freedom of Information Code (the "Code") for a copy of Stewart International Airport's most recent electricity contract with their current electric supplier, including a PSA and Confirmation, as well as the most recent electricity bill from the supplier for every account that the airport maintains.

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/14093-C.pdf>. Paper copies of the available records are available upon request.

Certain material responsive to your request is exempt from disclosure pursuant to exemption (1) of the Code.

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

Very truly yours,



Daniel D. Duffy
FOI Administrator



Natural Gas · Fuel Oil · Electricity · Green

BILLING ADDRESS

The Port Authority of NY & NJ
Attn: Gregory Wong
STEWART AIRPORT
Floor 11
225 Park Avenue South
New York, NY 10003-0000

CONTACT US

Phone: 1-800-437-7265 Hours (Sep - May)
Fax: 1-866-239-5671 Mon - Fri 8am - 6pm
Email: QCSTeam@hess.com Hours (June - Aug)
Web: www.hessenergy.com Mon - Fri 8am - 5pm

HESS MESSAGE CENTER

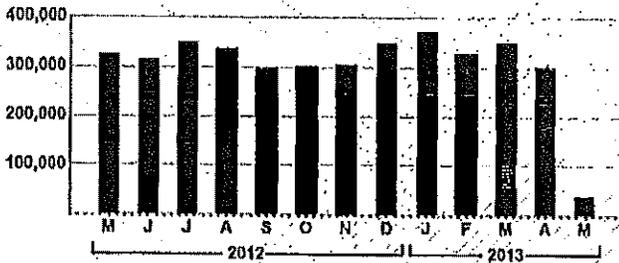
INVOICE INFORMATION

Invoice Number ES13806663
Invoice Date 05/31/2013
Date Due 06/30/2013
Payment Terms Net 30 Days

Payment Method Check
Hess Customer # to Reference in Call 359753 / 14876

USAGE CHART

BILLING SUMMARY



Prior Balance \$102,263.67
Payment Received (\$102,263.67)
Current Charges \$4,938.84

Total Amount Due \$4,938.84

Please tear at perforation and return with your payment



PAYMENT SLIP

Please make checks payable to Hess Corporation and reference invoice number with payment.

Invoice Number: ES13806663
The Port Authority of NY & NJ
Attn: Gregory Wong
STEWART AIRPORT
Floor 11
225 Park Avenue South
New York, NY 10003-0000

Hess Customer #: 359753 / 14876
Due Date: 06/30/2013
Total Amount Due: \$4,938.84
Amount Enclosed:

Hess Corporation
PO Box 905243
Charlotte, NC 28290-5243

For Hess Use Only

CONTACT US

Phone: 1-800-HESS-AOK (437-7265) Hours (Sep - May)
 Fax: 1-866-239-5671 Mon - Fri 8am - 6pm
 Email: QCSTeam@hess.com Hours (June - Aug)
 Web: www.hessenergy.com Mon - Fri 8am - 5pm

REMIT PAYMENT TO

HESS CORPORATION
 P.O. BOX 905243
 CHARLOTTE, NC 28290-5243

COMMONLY ASKED QUESTIONS

- Q: Who will read my meter and when will it be read?**
A: The utility company is still responsible for reading your meter. The timing is based on the specific utility company's procedures.
- Q: Why is the usage amount on my bill different than the usage amount on the utility company bill?**
A: Hess bills on city gate volume. The utility bill is based on meter readings (burner tip) at your location. The difference, utility line loss, is set by and varies by utility. Line loss was previously included by the utility in your local pricing. Line loss is a regulated charge based on percentages determined by each utility to compensate for the utility's pipeline system loss.
- Q: Now that I have chosen Hess as my natural gas/electricity marketer how will my service change?**
A: The only difference you should see is in billing. Hess will charge you for the commodity, while the utility (LDC/EDC) will charge you for distribution/transportation. There should be no other changes in your gas/electric service. The utility will still read your meter and you should still call the utility in the event of an emergency.
- Q: Do I have to sign an agreement?**
A: Yes. Hess will not sell natural gas/electricity to anyone without a signed agreement. This is to protect you as well as us. Customers should not purchase any commodity from a marketer without an agreement because they will be at risk for penalties should the supplier fail to live up to obligations.
- Q: When and how often will I be billed?**
A: Initially, there may be up to a two month delay from the time you enroll or start to receive service to the time you receive your first bill. This is due to timing with the utility company enrollment requirements. You can expect a monthly invoice thereafter.
- Q: Can I be changed to another marketer without my consent?**
A: No. Deregulation laws contain strong consumer protection features that prohibit "slamming". There are severe penalties for marketers who engage in this practice. Slamming is the involuntary switching of a customer from one supplier to another.
- Q: What are GSA charges/credits?**
A: Gas Settlement Adjustment (GSA) either credits or debits your account for the value of natural gas usage that differs from your contracted quantity.

DEFINITIONS

- Board of Public Utilities** State agency responsible for regulating local utility companies (may also be called Public Service Commission).
- Burner Tip Point** where natural gas is ultimately used by the customer (the meter).
- CCF** 100 cubic feet of gas. This is a measure of gas usage.
- City Gate** Physical connection of an interstate pipeline and the pipeline of the local natural gas utility.
- Commodity Charge** The cost of natural gas/electricity provided to you during the billing period.
- Distribution Utility (LDC/EDC)** A retail natural gas/electricity distribution company that delivers natural gas/electricity to end-users.
- Kilowatt (kW)** One thousand (1,000) watts. A unit of measure of the amount of electricity needed to operate given equipment.
- Kilowatt-hour (kWh)** The most commonly used unit measure telling the amount of electricity consumed over time. It means one kilowatt of electricity supplied for one hour.
- Line Loss** The difference between the amount of commodity (natural gas) brought to the city gate, versus the amount of commodity usage reported at the meter (burner tip). Line loss was previously included by the utility in your total pricing. Line loss is a regulated charge based on percentages determined by each utility to compensate for the utility's pipeline system loss.
- Local Distribution Company (LDC/EDC) charges** The fee assessed by the local utility for delivery of natural gas/electricity to the customer's home or business through utility's distribution lines. In most cases this charge is billed separately by the utility.
- Meter** A device for measuring levels and volumes of a customer's natural gas and electricity usage. The local utility retains responsibility for reading and maintaining these meters.
- MMBTU** Million British thermal units, which is a heating equivalent measure for natural gas and is an alternative measure of natural gas reserves.
- No Utility Data Available** If this appears on your bill, we were unable to obtain usage data for your meter from the local utility company. Your next bill will show usage data for this unread period and the next reading period.
- Therm** One hundred thousand (100,000) British thermal units (1 Therm = 100,000 Btu).

IF YOU SUSPECT A NATURAL GAS LEAK OR SMELL GAS DIAL 911 OR CONTACT YOUR LOCAL UTILITY DISTRIBUTION COMPANY

HessEnergy.com has a multitude of features and tools for you, making account management easier than ever before. The online Customer Center never closes, giving you the chance to manage your account and obtain energy information and insight at your own convenience. Listed below are a few of the benefits customers are currently receiving online:

- User-friendly access to your account 24/7
- Personalized dashboards containing an overview of your account
- Manage multiple accounts under one or separate profiles
- View current invoices before you receive them in the mail or retrieve historic invoices
- Compare your usage over time
- Direct access to your account balance
- Exclusive access to Hess' expert traders and product specialists take on the market
- And more.

VISIT WWW.HESSENERGY.COM TO GET STARTED TODAY.

THE PORT AUTHORITY OF NY & NJ

Lillian D. Valenti
Director, Procurement

October 5, 2012

VIA MAIL & FAX (732-750-6378)

Mr. Kevin George
Government Sales Manager
Hess Corporation
One Hess Plaza
Woodbridge, NJ 07095

**Subject: ELECTRIC GENERATION SERVICES AT SELECTED NEW YORK
AND NEW JERSEY FACILITIES OF THE PORT AUTHORITY OF
NEW YORK AND NEW JERSEY; SOLICITATION NUMBER 30311;
CONTRACT NUMBER 4600009238; PURCHASE ORDER NUMBER
4500063559**

Dear Mr. George:

The Port Authority of New York and New Jersey ("the Authority") hereby confirms the acceptance of Hess Corporation's ("Hess") bid to provide electricity to 31 accounts at the Authority's Stewart International Airport under the above referenced Contract ("Contract"). The term of the Contract is for a two (2) year period to commence on or about December 1, 2012 and shall expire, unless sooner terminated, revoked or extended in accordance with the provisions thereof, on or about November 30, 2014.

The Contract between the parties shall consist of the following items. In case of conflict or inconsistency between any of the items, the order of precedence shall be as follows:

1. This Letter of Acceptance;
2. Hess' e-mail confirmation of the Authority's award, dated September 25, 2012 from Ms. Candice Hilaire to Ms. Lillian D. Valenti of the Authority;
3. Authority's e-mail award dated September 25, 2012 from Ms. Lillian D. Valenti to Ms. Candice Hilaire of Hess;
4. Hess' pre-qualification information submittal dated September 11, 2012;

2 Montgomery Street, 3rd Floor
Jersey City, NJ 07302
T: 201 395 7477

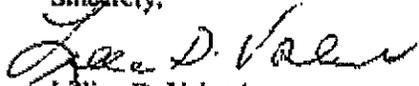
THE PORT AUTHORITY OF NY & NJ

5. The Authority's Request for Pre-Qualification Information Solicitation # 30311, entitled "Electric Generation Services at Selected New York and New Jersey Facilities of the Port Authority of New York and New Jersey" as amended by Addenda numbers 1 through 4.

Please note that Purchase Order number 4500063559 has been assigned for invoicing, payment and administrative purposes.

Your contact for this Contract is Mr. Brian Chang who can be reached at 212-435-5463. If you have any questions concerning the award of this Contract, please contact Mr. Richard Grohl of my staff at 201-395-3441.

Sincerely,



Lillian D. Valenti
Director
Procurement Department

APPROVED:	
FORM	TERMS
<i>(Signature)</i>	<i>(Signature)</i>

Grehl, Richard

From: Hilaire, Candice [CHilaire@hess.com]
Sent: Tuesday, September 25, 2012 2:47 PM
To: Valenti, Lillian
Cc: Grehl, Richard; Kopik, Dennis; Leslie Whelan, Kathy
Subject: Re: Energy

Thank you for the notification of award.

Confirming receipt of this email.

Candice Hilaire
Hess Corporation
CHilaire@hess.com

Sent from my iPhone

On Sep 25, 2012, at 2:14 PM, "Valenti, Lillian" <lvalenti@panynj.gov> wrote:

>
>
>
>
> Candice,
> The Port Authority of New York and New Jersey hereby officially
> notifies Hess that it has been awarded the following account group in
> accordance to the terms set forth in Bid #30311:
> Auction RFP Number: 16297
> EDC: Central Hudson
> Estimated Annual kWh: 4,452,193
> Estimated Annual Contract Value: \$40,070 + actual market costs (as
> described in the pricing product definition of the solicitation)
> Months: 24
> Total Estimated Contract Value Over Term: \$80,139 + actual market
> costs (as described in the pricing product definition of the
> solicitation)
> Number of Accounts: 31
> Pricing Product: Index DA Fixed Adder
> Minimum Bandwidth: N/A
> Add/Delete Allowance: 5%
> Winning Bid Price per kWh: \$0.009
> Service Start Date: First Meter Read on or after December 1, 2012
>
> A hard copy award letter will follow with signatures.
>
> Please respond to the distribution list above confirming receipt of
> this email.
>
> Regards,
>
> Lillian D. Valenti
> Director of Procurement
>
>
>

> NOTICE: THIS E-MAIL AND ANY ATTACHMENTS CONTAIN INFORMATION FROM THE
> PORT
>
> AUTHORITY OF NEW YORK AND NEW JERSEY AND AFFILIATES. IF YOU BELIEVE
> YOU HAVE
>
> RECEIVED THIS E-MAIL IN ERROR, PLEASE NOTIFY THE SENDER IMMEDIATELY,
>
> PERMANENTLY DELETE THIS E-MAIL (ALONG WITH ANY ATTACHMENTS), AND
> DESTROY ANY
>
> PRINTOUTS.

This e-mail and any attachments are for the sole use of the intended recipient(s) and may contain information that is confidential. If you are not the intended recipient(s) and have received this e-mail in error, please immediately notify the sender by return e-mail and delete this e-mail from your computer. Any distribution, disclosure or the taking of any other action by anyone other than the intended recipient(s) is strictly prohibited

Grehl, Richard

From: Valenti, Lillian
Sent: Tuesday, September 25, 2012 2:17 PM
To: 'CHilaire@hess.com'
Cc: Grehl, Richard; Kopik, Dennis; Leslie Whelan, Kathy
Subject: Energy

Candice,

The Port Authority of New York and New Jersey hereby officially notifies Hess that it has been awarded the following account group in accordance to the terms set forth in Bid #30311: Auction RFP Number: 16297

EDC: Central Hudson

Estimated Annual kWh: 4,452,193

Estimated Annual Contract Value: \$40,070 + actual market costs (as described in the pricing product definition of the solicitation)

Months: 24

Total Estimated Contract Value Over Term: \$80,139 + actual market costs (as described in the pricing product definition of the solicitation)

Number of Accounts: 31

Pricing Product: Index DA Fixed Adder

Minimum Bandwidth: N/A

Add/Delete Allowance: 5%

Winning Bid Price per kWh: \$0.009

Service Start Date: First Meter Read on or after December 1, 2012

A hard copy award letter will follow with signatures.

Please respond to the distribution list above confirming receipt of this email.

Regards,

Lillian D. Valenti
Director of Procurement



Forward Thinking Energy



Kevin George
Government Sales Manager

September 11, 2012

The Port Authority of NY & NJ
Procurement Department
Two Montgomery Street, 3rd Floor
Jersey City, NJ 07302

ORIGINAL

Attn: Bid/Proposal Custodian

**RE: The Port Authority of NY & NJ / RFP# 30311
Electric Generation Services at Selected New York
and New Jersey Facilities of the Port Authority
of New York and New Jersey**

To Whom It May Concern:

Hess Corporation is interested in pursuing the electricity requirements for The Port Authority of New York & New Jersey. We have attached all of the pertinent information regarding our company and the Hess personnel that will be involved.

If you have any questions regarding the information I have provided, please feel free to contact me at (732) 750-6888.

Hess Corporation

Kevin George
Government Sales Manager

Hess Corporation
1 Hess Plaza
Woodbridge, NJ 07095

Tel: 732.750.6888
Fax: 732.750.6378
kgeorge@hess.com

III – 1 Executive Summary

Hess Corporation, a Fortune 100 company, is a leading global independent energy company, engaged in the exploration and production of crude oil and natural gas, as well as the refining and marketing of petroleum products, natural gas, and electricity to customers on the East Coast of the United States. This integrated approach allows Hess to meet the total energy needs of its customers while providing competitive pricing.

Exploration and production is the engine of future income and growth, currently representing nearly 80% of capital employed and over 95% of annual capital expenditures. The Company has operations in the United States, United Kingdom, Norway, Denmark, Russia, Equatorial Guinea, Algeria, Libya, Gabon, Egypt, Ghana, the Joint Development Area of Malaysia and Thailand, Indonesia, Thailand, Azerbaijan, Australia, Brazil and St. Lucia. We continue to increase reserves outside the mature regions of the United States and North Sea.

Our marketing and refining objective is to maximize financial returns from existing assets. The Company operates about 1,360 Hess branded sites in 16 states along the East Coast of the United States. We continue to selectively expand our HESS EXPRESS convenience store network. The HOVENSA refinery in the United States Virgin Islands, a joint venture between a subsidiary of Hess Corporation and a subsidiary of Petroleos de Venezuela, S.A. (PDVSA), is one of the largest crude oil refineries in the world. Refined petroleum products, as well as natural gas and electricity, are marketed to customers throughout the East Coast of the United States. This integrated approach to marketing allows the Company to meet the total energy needs of our customer base while maintaining a low-cost operating base. We have a strong leadership team and a global organization, implementing a focused strategy that is positioning Hess Corporation for long-term financial performance.

We have a strong leadership team and a global organization, implementing a focused strategy that is positioning Hess for long-term financial performance.

Hess is a leading energy supplier to government, commercial, industrial and wholesale customers in the Northeast, Ohio Valley and Mid-Atlantic states. Hess offers a customer-focused strategy for government entities built around reliability, exemplary customer service and operational excellence. Hess has a dedicated Government Sales Team that is experienced in satisfying the requirements of our customers in the government sector.

III – 2 Corporate Organization

Hess Corporation is a PUC Licensed Supplier and is registered with the EDC to sell electric generation service; meets all creditworthiness and operational standards of the EDC and the PJM; and is in compliance with all PJM, BPU, FERC and State of New Jersey & New York law, regulations and standards.

- (a) Hess Corporation has been selling electricity since 1999.

- (b) Hess Corporation is a major power marketer in the control areas of independent system operators (ISOs) like PJM and NYISO and currently serves nearly 21,000 industrial customers with the total load served annually around 40 million megawatt hours.

Hess Corporation serves about 1200 MW of load in the New York ISO control area (NYCA), 1,420 MW of load in the NEPOOL and about 1550 MW of load in the PJM control area apart from the around 310 MW served under the BGS in the state of New Jersey. Hess Corporation is actively pursuing an aggressive marketing strategy to increase its load capacity and customer base in both these control areas by offering a variety of cost effective products which will enable its customers to choose the optimum product. Hess Corporation also manages the operations of two generating stations, combined generating capacity equaling 120 MW, in the PJM territory.

The Electric Operations Group management team is led by Mr. John Schultz, VP, Energy Marketing Operations, and Mr. Hambir Chavan, Manager, Retail Electric Pricing. Both have over 25 years of combined experience with utilities like Allegheny Power and PSE&G and have held various leadership positions in these organizations.

Hess Corporation is a certified member of both PJM and the NYSIO controlled electricity markets.

III – 3 Statement of Product

Hess Corporation has ample staff to handle all the needs of the RFP for The Port Authority of NY & NJ entities with a transparent, flexible, and reliable supply of electric service.

III – 4 Work Plan

If awarded the business, Hess Corporation's staff of electrical traders and schedulers will ensure that the needs of The Port Authority of NY & NJ will be met. Hess will coordinate with The Port Authority of NY & NJ to assure the electronic metering of the electric delivered under the requirements of the RFP meet the requirements for information, will make arrangements for the delivery of electric for the account based on the requirements of the RFP, and will provide monthly bills.

III – 5 Prior Experience

Please find attached our references for prior experience.

III – 6 Market Experience

John Schultz, VP, Energy Marketing Operations

John has 16 years experience in energy industry and has held various positions in natural gas and electricity trading and operations, commercial and industrial sales and energy infrastructure development. John began his career at the Eastern Group in Alexandria, VA and subsequently

worked for Statoil Energy, where he was Vice President of Energy Operations. John's career at Hess Corporation began in 2000, where he worked for several years in natural gas operations. In 2005, he moved into a sales role and managed several of Hess's retail sales regions from New England to North Carolina. In 2007, John became Vice President of Business Development at Hess Corporation and led the company's development effort for their first merchant power plant, a 512 MW facility in NJ. In 2009, John held the position of Vice President of Electric Operations and was responsible for all aspects of Hess power business with annual sales of 40 million Mwths. Currently, John is Vice President Energy Marketing Operations with oversight of natural gas and electricity trading and operations, as well as business development activities. He is also a member of the Executive Committee of Bayonne Energy Center, LLC.

John is a graduate of Penn State University and has attended executive development programs at both the Fuqua School of Business at Duke University and Harvard Business School. He is the Chair of the Carbon Markets Working Group within Hess' corporate Climate Change Network and is currently helping prepare the company for the impact of pending climate change legislation.

Hambir Chavan, Manager, Electric Pricing & Structure

6 years of combined professional and management experience in the energy business. Before joining Hess Corporation, Hambir worked for Reliance Industries Limited and held the position of Assistant Manager in the Petrochemical Marketing Group. Hambir is responsible for supervising all the Retail electric pricing for Hess in Pennsylvania, New Jersey, Maryland, DC, Delaware, New York, Connecticut, Massachusetts, Rhode Island, New Hampshire and Maine.

Mr. Chavan has a bachelors in Mechanical Engineering and a masters in Operations Research.

Renee Pegeron, Supervisor Electricity Billing

Renee Pegeron has been employed with the Hess Corporation for over 12 years. Renee currently manages the activities of the Electricity Billing group to ensure timely and accurate billings to customers. Renee is responsible for the development and implementation of key controls and process improvements. In her eleven years with Hess, Renee has held various positions with Marketing and Refining, and has experience in Oil Billing, Natural Gas Billing and Operations, and most recently, Electric Operations.

Ms. Pegeron has always been very focused on process improvement and has played a key role in a number of projects. While in Natural Gas Operations, Renee was the project leader for the implementation of the natural gas proposal management system, and, in 2007, was a team member on the Natural Gas & Electricity Billing Redesign project.

Ms. Pegeron is currently enrolled in Middlesex County College in a Business Administration program.

Kevin George, Manager, Government Sales

Kevin has 4 years of experience in the energy industry and has held various positions in operations, sales and technical support over his 11 year career.

Kevin began his career as a software developer with IBM in 2001 and subsequently worked for ADP where he lead a business analyst team specializing in the identity management business domain. In 2008 he joined the Hess Corporation as a project manager and transitioned from the computing services sector to the energy industry. Currently, Kevin is manager of the Government Sales Team, responsible for managing over 6 million MWhs of electricity and 34 million dth of natural gas annually.

Kevin has a Masters in Information Management from the Stevens Institute of Technology and a BS in Computer Science from Rutgers, The State University of NJ.

Customer Service

This department is responsible for the timely handling of all customer issues. All issues are logged for tracking purposes and then disseminated to the appropriate individuals. The Quality Customer Service Team is a multi-functional group which has been trained to handle fuel oil, natural gas and electricity inquiries for a customer base exceeding 10,000. All customer service issues should be directed to our dedicated Quality Customer Service Department at 800-437-7285. They can also be contacted via e-mail (QCSTEAM@Hess.com) or by fax (732-750-6039).

Point of Contact

Kevin George, Manager, Government Sales
Telephone: 732-750-6888
Fax: 732-750-6378
E-mail: KGeorge@hess.com

III – 7 PJM Membership Status

See attached PJM Membership list provided by www.pjm.com.

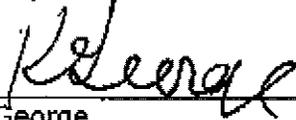
**The Port Authority of NY & NJ / RFP# 30311
Electric Generation Services at Selected New York
and New Jersey Facilities of the Port Authority
of New York and New Jersey**

MBE/WBE Business Utilization Plan

Hess currently uses E.G. Bowman Co., Inc., a minority-owned and woman-owned insurance brokerage, for its insurance needs. Their contact information is as follows:

E.G. Bowman Co.
97 Wall Street
New York, NY 10005
(212) 425-8150
jlin@egbowman.com

Hess Corporation



Kevin George
Government Sales Manager

HESS CORPORATION

One Hess Plaza, 12th Floor
Woodbridge, NJ 07095
FAX: (732) 750-8151

Credit Risk Department
1185 AVENUE OF THE AMERICAS, 38th Floor
NEW YORK, NY 10036
Fax: (917) 342-8730

COUNTERPARTY INFORMATION

LEGAL NAME: Hess Corporation
Address: One Hess Plaza, 12th Floor
Woodbridge, NJ 07095

Federal Identification # : (Ex. 1)

Dun & Bradstreet #s: 00-697-9785

FINANCIAL STATEMENTS: www.hess.com has the most recent Annual report of Hess Corp.

RATING: Rated by Moody's, S & P and Fitch.

BANK REFERENCE

J P Morgan Chase Bank
One Chase Manhattan Plaza
New York, N.Y. 10081
Contacts: Paul Scully, V.P. (212) 552 - 7156
Bill Berdan, AVP, (212) 552 -1253

TRADE REFERENCES

ConocoPhillips Company

Richard Fernandez
Credit Manager
600 N. Dairy Ashford
Houston, TX 77079
Tel: (281) 293-2391
Fax: (281) 293-5352
Email: richard.w.fernandez@conocophillips.com

BP Energy Company

Debra Hrelja
Credit
501 Westlake Park Blvd
Houston, TX 77079
Tel: (281) 366-2079
Fax: (281) 366-6335
Email: debra.hrelja@bp.com

Louis Dreyfus Energy Services

Eric Twombly, CFA, FRM
Vice President, Director of Credit
20 Westport Road
Wilton, CT 06897
Tel: (203) 761-2103
Fax: (203) 761-8069
Email: TwomblyE@Louisdreyfus.com

Coral Energy Resources L.P

Qingqing Zhao
Portfolio Manager
909 Fannin Street
Houston, TX 77010
Tel: (713) 230-3967
Fax: (713) 265-3967
Email: qingqing.zhao@shell.com

Fortis Energy Marketing & Trading, LP

Rod Nelson
Credit Manager
1100 Louisiana Street, Suite 4900
Houston, TX 77002
Tel: (713) 393-8901
Fax: (713) 890-3111
Email: rod.nelson@us.fortis.com

NJR Energy Services Company

Dennis Veltre
Credit Manager
1415 Wyckoff Road
Wall, NJ 07719
Tel: (732) 838-4541
Fax: (732) 919-8118
Email: dveltre@njresources.com

**For additional information, please contact Credit Controls at
(732) 750-6047 (Jan Plumaker) or (212) 536-8457 (Greg Cortez).**

**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 Hess Corporation

Bidder's Address One Hess Plaza

City, State, Zip Woodbridge, NJ 07095

Telephone No. 732-750-6888 FAX 732-750-6378

Email KGeorge@hess.com EIN# (Ex. 1)

SIGNATURE  Date 9/10/12

Print Name and Title Government Sales Manager

2. NAME AND RESIDENCE OF PRINCIPALS SHEET

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

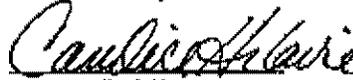
NAME	TITLE	ADDRESS OF RESIDENCE
PLEASE SEE ATTACHED ANNUAL REPORT		(Do not give business address)

ACKNOWLEDGEMENT:

STATE OF: NEW JERSEY
COUNTY OF: MIDDLESEX

On this 11th day of September, 20 12, personally came before me, Kevin George Gov't Sales Manager, 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.

CANDICE D. HILAIRE
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires Nov. 10, 2016


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).

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={TDu1E3n%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=iTDuIE3n%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=iTDuIE3n%2F%2fU%3d>

THE PORT AUTHORITY OF NY & NJ

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

8/17/2012

ADDENDUM # 1

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 9/7/2012, no later than 2:00PM

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

- A. Part II, Contract Specific Information for Bidders, section 9, Pre-Submittal Conference Call, the call-in number has been changed to "877-807-5706". The password remains unchanged.
- B. In Part I, Standard Information for Bidders, section 2, General Information: Solicitation Process and Schedule, paragraph 2b, Procurement Schedule, Milestone for "Online Reverse Electricity Auction(s)" has been changed from "9/18/12" to "9/19/12".

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: HESS CORPORATION

INITIALED: 

DATE: 8/23/2012

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.

PS11A11

THE PORT AUTHORITY OF NY & NJ

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

8/22/2012

ADDENDUM # 2

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 9/7/2012, no later than 2:00PM
- Originally due on 9/7/2012, no later than 2:00PM

I. CHANGES/MODIFICATIONS

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

1. In reference to Part V, section 1b, remove paragraph 2 in its entirety and replace with the following:

"2. Index RT Fixed Adder 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 must be associated with the PJM Real-Time market for the applicable load zone with a fixed retail adder charge. The retail adder for the applicable PJM Real-Time market load zone should include all applicable capacity charges, transmission charges, ancillary services, balancing operating reserve charge, RPS, New Jersey State Sales and Use Tax and WES procurement fee. Line losses and RMR must be treated as pass-through charges for this product.

(ii) For Accounts in the State of New York: Price for the commodity must be associated with the NYISO Real-Time market for the applicable load zone with a fixed retail adder charge. The retail adder for the applicable NYISO Real-Time market load zone should include all applicable capacity charges, ancillary services, balancing operating reserve charge, and WES procurement fee. Line losses and RMR must be treated as pass-through charges for this product."

PS11AII

2. In reference to Part V, section 1b, add paragraphs 3, 4, 5, 6, and 7 below:

3. Index DA Fixed Adder 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 must be 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, DA operating reserve charge, RPS, New Jersey State Sales and Use Tax and WES procurement fee. Line losses and RMR must be treated as pass-through charges for this product.

(ii) For Accounts in the State of New York: Price for the commodity must be 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, ancillary services, DA operating reserve charge, and WES procurement fee. Line losses and RMR must be treated as pass-through charges for this product.

4. Index RT All Pass-thru: 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.

The only components to be included in this price are the supplier's margin and the World Energy fee. All other pricing components should be treated as a pass through.

(i) For Accounts in the State of New Jersey: Price for the commodity must be associated with the PJM Real-Time market for the applicable load zone.

(ii) For Accounts in the State of New York: Price for the commodity must be associated with the NYISO Real-Time market for the applicable load zone.

5. Index DA All Pass-thru: 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.

The only components to be included in this price are the supplier's margin and the World Energy fee. All other pricing components should be treated as a pass through.

(i) For Accounts in the State of New Jersey: Price for the commodity must be associated with the PJM Day Ahead market for the applicable load zone.

(ii) For Accounts in the State of New York: Price for the commodity must be associated with the NYISO Day Ahead market for the applicable load zone.

PS11A11

6. Index RT CAP/TRAN Pass-thru: 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 must be associated with the PJM Real-Time market for the applicable load zone with a fixed retail adder charge. The retail adder for the applicable PJM Real-Time market load zone should include all ancillary services, balancing operating reserve charge, RPS, New Jersey State Sales and Use Tax and WES procurement fee. Line losses, RMR, applicable capacity charges, and transmission charges must be treated as a pass-through charge for this product.

(ii) For Accounts in the State of New York: Price for the commodity must be associated with the NYISO Real-Time market for the applicable load zone with a fixed retail adder charge. The retail adder for the applicable NYISO Real-Time market load zone should include all applicable ancillary services, balancing operating reserve charge, and WES procurement fee. Line losses, RMR, and applicable capacity charges must be treated as a pass-through charge for this product.

7. Index DA CAP/TRAN Pass-thru: 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 must be 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 ancillary services, DA operating reserve charge, RPS, New Jersey State Sales and Use Tax and WES procurement fee. Line losses, RMR, and applicable capacity charges must be treated as a pass-through charge for this product.

(ii) For Accounts in the State of New York: Price for the commodity must be 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, ancillary services, DA operating reserve charge, and WES procurement fee. Line losses, RMR, and applicable capacity charges must be treated as a pass-through charge for this product.

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.

PS11AH

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: Is this procurement a post and respond or will it be an auction?

A1: The Port Authority is utilizing an internet-based energy auction platform to obtain pricing for this procurement. Please see Part I, section 2, General Information: Solicitation Process and Schedule, for additional information.

Q2: What facility types will this electricity be serving?

A2: Electricity will serve a range of facility types, including public transit facilities, airports, interstate tunnels, and small to medium commercial buildings. We have grouped accounts by rate class in Appendix 1 of this solicitation. Appendix 1 also includes monthly and interval data for the accounts included in this solicitation that will give you insight into load-shapes, etc. If you do not have a copy of the Appendix 1, please see Part II, section 12, Available Documents, for instructions on how to obtain this information.

Q3: For companies that are privately held, are there any documents you would consider in lieu of publicly distributed financial statement ?

A3: Please see Part I, Section 13 paragraph a(1)(ii) and a(1)(iii)

(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.

Q4: Has this solicitation been set aside for Port Authority certified minority, woman or small business enterprises?

A4: No.

Q5: Since suppliers are being asked to include all applicable taxes in their bids, could the Port Authority please provide a list of taxes, state and federal, that should be included?

A5: The only tax that should be included in your bid is the New Jersey Sales and Use tax as it applies to New Jersey accounts.

Q6: Are exceptions to the solicitation language allowed?

A6: The Port Authority will consider exceptions requested during the Q&A period but makes no guarantee or representation as to a response. If applicable, responses will be issued via an addendum. Unless otherwise addressed via an addendum, no exceptions to the terms and conditions are allowed.

Q7: In Part III of the solicitation, Change in Law, if transmission and capacity obligations and rates change during the time of the contract, does the Change in Law portion allow for that change to be passed along?

A7: Please note this correction from what was said on the call: Changes in transmission and capacity obligation tags will not be considered a change in law. If and only if PJM posts new charges for transmission will suppliers have a right to use the change in law provision to pass through any increase/decrease. However, there are multiple index pricing products for which we are asking that transmission and capacity be treated as pass-thru charges.

Q8: For the Index All Pass-Thru pricing products, what elements does the Port Authority expect suppliers to pass through?

A8: Everything except the supplier margin and broker fee.

Q9: Do the Standard Contract Terms and Conditions make up the contract that will ultimately be signed for this supply contract?

A9: The entire solicitation -- i.e. the Standard Contract Terms and Conditions, Parts I – V, and any addendum -- will be considered part of the supply contract. Part IV should be signed and returned with your pre-qualification package. Additionally, any addendum released must be signed and returned with your pre-qualification package.

Q10: Will qualified suppliers be prohibited from bidding if only licensed to serve New Jersey accounts?

A10: If you are only licensed to serve New Jersey accounts, you can still participate in the procurement. Your participation will be restricted to those account groups that only contain New Jersey accounts.

Q11: Can qualified suppliers choose to only bid on certain pricing products/account groups/term lengths/etc?

A11: Yes. Suppliers are under no obligation to bid on every account group, term length, pricing product, etc. If, for instance, you do not wish to bid on a 48 month term, you can bid on just the 12, 24, and 36 month terms and not submit a bid for the 48 month term. Please note however, that if you do bid on an account group, every single account within that group must be included in your bid.

Q12: In Part III, Section 7, is adding/deleting accounts done under the "bandwidth" percentage that governs that particular award?

A12: Yes, but this is not a traditional bandwidth. (For the accounts requesting fixed pricing, the Port Authority is requesting a traditional bandwidth of 25%.) This clause allows the Port Authority to completely delete an account or add an entirely new account at the same contract rate awarded through the auction.

E.g. Suppose the award looks like this:

\$0.05/kWh
100,000,000 kWh
24 month term
5% add/delete

If that's the case, the Port Authority will have the right to add new accounts to the contract, at the \$0.05/kWh rate, so long as the total load of accounts added does not exceed 5,000,000 kWh.

Q13: In Part V, Section 1a, "Consumption During Billing Period," is the Port Authority requiring billing based on calendar month or meter reads?

A13: The Port Authority will require billing to be consistent with utility meter reads.

Q14: Will the Port Authority consider a single-bill option?

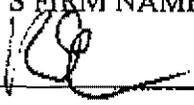
A14: If a supplier prefers the single-bill option and is willing to provide the Port Authority with a summary each month of what each contracted account used and was charged, Port Authority may consider it. Such a supplier will need to spell out this preference as well as the summary procedure in its pre-qualification response. Please note that the Port Authority will certainly allow for dual billing.

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 EQIB 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: HESS CORPORATION

INITIALED: 

DATE: 8/23/2012

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.

THE PORT AUTHORITY OF NY & NJ

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

9/5/2012

ADDENDUM # 3

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

Originally due on 9/7/2012, no later than 2:00PM

CHANGES/MODIFICATIONS

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

- A. In Part I, Standard Information for Bidders, section 2, General Information: Solicitation Process and Schedule, paragraph b, Procurement Schedule, the following Milestone Dates have changed:
- "Post Questions and Answers" has been changed from 8/31/2012 to on/before 9/7/2012.
 - "Statement of Prerequisites Due" has been changed from 9/7/2012 to 9/14/2012.
 - "Pre-Qualification Notifications Issued" has been changed from 9/14/2012 to on/before 9/18/2012.
 - "Online Reverse Electricity Auction(s)" has been changed from 9/18/2012 to 9/25/2012.

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: HESS CORPORATION

INITIALED:  DATE: 9/6/12

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.

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 I."

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:

$$[(\text{Consumption During Billing Period}) - (\text{Maximum Monthly Consumption Amount})] \times (\text{Spot Energy Price})$$

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:

$$[(\text{Minimum Monthly Consumption Amount}) - (\text{Consumption During Billing Period})] \times [(\text{Contract Rate}) - (\text{Spot Energy Price})]$$

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 1 in 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: Hess Corporation

INITIALED: *RGrehl*

DATE: 9/7/12

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.

State of New Jersey



Board of Public Utilities

Two Gateway Center - Suite 801, Newark, New Jersey 07102

HEREBY REGISTERS

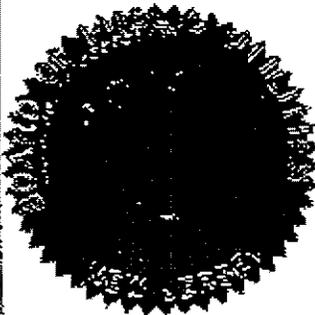
Hess Corporation

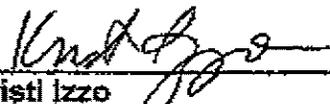
One Hess Plaza

Woodbridge, New Jersey 07095

To conduct business in the State of New Jersey as an

Electric Power Supplier





Kristi Izzo
Secretary of the Board

Registration No. ESL - 0015
Effective Date: February 10, 2011
Expiration Date: February 9, 2012

STATE OF NEW YORK DEPARTMENT OF PUBLIC SERVICE
THREE EMPIRE STATE PLAZA, ALBANY, NY 12223-1350
www.dps.state.ny.us

PUBLIC SERVICE COMMISSION

GARRY A. BROWN
Chairman
PATRICIA L. ACAMPORA
MAUREEN F. HARRIS
ROBERT E. CURRY JR.
JAMES L. LAROCCA
Commissioners



PETER MCGOWAN
General Counsel
JACLYN A. BRILLING
Secretary

October 13, 2011

Mr. Jay Kooper
Director of Regulatory Affairs
Electric Division
Hess Corporation
One Hess Plaza
Woodbridge, NJ 07095

Ms. Kristyn Noeth
Director of Regulatory Affairs
Gas Division
Hess Corporation
One Hess Plaza
Woodbridge, NJ 07095

Re: Hess Corporation

Dear Mr. Kooper and Ms. Noeth:

Thank you for your triennial submittal pursuant to Section 2.D.2 of the New York State Department of Public Service's Uniform Business Practices (UBP). This letter is to inform you that the documentation submitted has been reviewed by Staff and determined to be in compliance with the UBP.

Be advised that to maintain your ESCO eligibility, you must notify Staff of any substantive legal, financial or business related changes to your company as they occur. If your business plan changes and you decide to expand your service, you must immediately submit the appropriate documentation for Staff review and determination of how it affects your current eligibility.

Please do not hesitate to contact me if you have any further questions or concerns at (518) 486-2432 or Christine_Bosy@dps.state.ny.us.

Sincerely,

A handwritten signature in cursive script that reads "Christine A. Bosy".

Christine A. Bosy
Retail Access Section
Office of Consumer Policy

11/16/07

Taxpayer Identification#

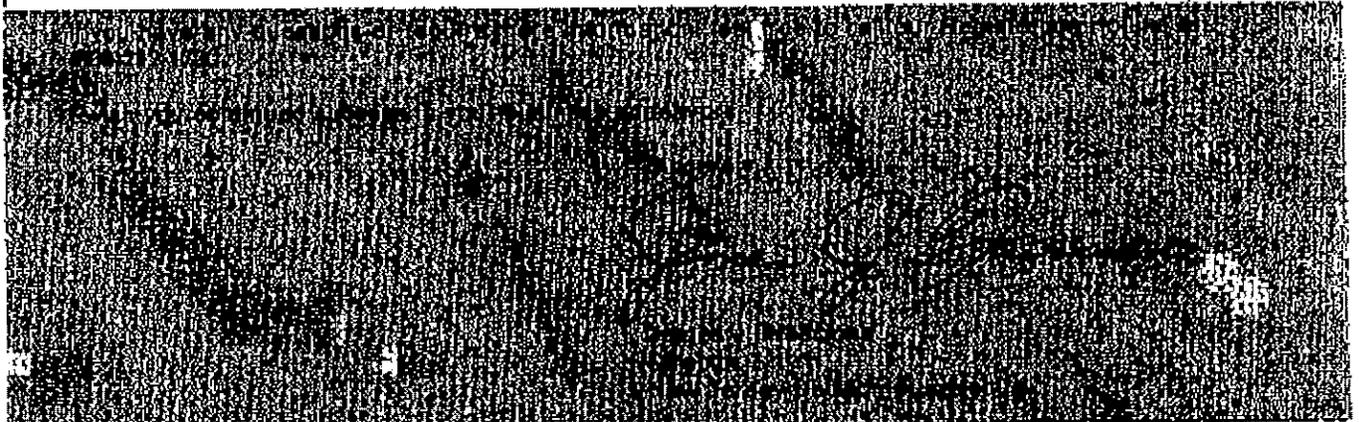
Dear Business Representative:

Congratulations! You are now registered with the New Jersey Division of Revenue.

Use the Taxpayer Identification Number listed above on all correspondence with the Divisions of Revenue and Taxation, as well as with the Department of Labor (if the business is subject to unemployment withholdings). Your tax returns and payments will be filed under this number, and you will be able to access information about your account by referencing it.

Additionally, please note that State law requires all contractors and subcontractors with Public agencies to provide proof of their registration with the Division of Revenue. The law also amended Section 92 of the Casino Control Act, which deals with the casino service industry.

We have attached a Proof of Registration Certificate for your use. To comply with the law, if you are currently under contract or entering into a contract with a State agency, you must provide a copy of the certificate to the contracting agency.



STATE OF NEW JERSEY BUSINESS REGISTRATION CERTIFICATE		<small>DEPARTMENT OF TREASURY/ DIVISION OF REVENUE PO BOX 287 TRENTON, NJ 08646-0287</small>
TAXPAYER NAME: HESS CORPORATION	TRADE NAME: HESS	
ADDRESS: 1 HESS PLAZA/TAX DEPT/ JAMES L WOODBIDGE NJ 07095	SEQUENCE NUMBER: 000458	
EFFECTIVE DATE: 05/21/89	ISSUANCE DATE: 11/16/07	
		<i>James J. [Signature]</i> Acting Director New Jersey Division of Revenue
<small>FORM REV/03-01</small>		

DO NOT SUBMIT FORM TO DRY - SUBMIT FORM TO REQUESTING AGENCY
9/07 Revision

CITY OF NEW YORK
SUBSTITUTE FORM W-9:
REQUEST FOR TAXPAYER IDENTIFICATION NUMBER & CERTIFICATION

TYPE OR PRINT INFORMATION NEATLY. PLEASE REFER TO INSTRUCTIONS FOR MORE INFORMATION.

Part I: Vendor Information

1. Legal Business Name: (As it appears on IRS EIN records, CP570, 147C or Social Security Admin records, Social Security Card, certified Form SSA1028)

Hess Corporation

2. If you use DBA, please list below:

3. Entity Type (Check one only):
- | | | | | | | |
|---|--|---|--|--|---|---------------------------------|
| <input type="checkbox"/> Non-Profit Corporation | <input checked="" type="checkbox"/> Corporation/ LLC | <input type="checkbox"/> Government | <input type="checkbox"/> City of New York Employee | <input type="checkbox"/> Personal Service Corporation | <input type="checkbox"/> Individual / Sole Proprietor | <input type="checkbox"/> Trust |
| <input type="checkbox"/> Joint Venture | <input type="checkbox"/> Partnership/ LLC | <input type="checkbox"/> Single Member LLC (Individual) | <input type="checkbox"/> Resident/Non-Resident Alien | <input type="checkbox"/> Non-United States Business Entity | <input type="checkbox"/> | <input type="checkbox"/> Estate |

Part II: Taxpayer Identification Number (TIN) & Taxpayer Identification Type

1. Enter your TIN here: (DO NOT USE DASHES)

(Ex. 1)

2. Taxpayer Identification Type (check appropriate box):

- Employer ID No. (EIN) Social Security No. (SSN) Individual Taxpayer ID No. (ITIN) N/A (Non-United States Business Entity)

Part III: Primary 1099 Vendor & Remittance Address

1. Primary 1099 Vendor Address:

Number, Street, and Apartment or Suite Number

City, State, and Nine Digit Zip Code or Country

2. Remittance Address:

Number, Street, and Apartment or Suite Number

City, State, and Nine Digit Zip Code or Country

Part IV: Exemption from Backup Withholding

For payees exempt from Backup Withholding, check the box below. Valid explanation required for exemption. See instructions.

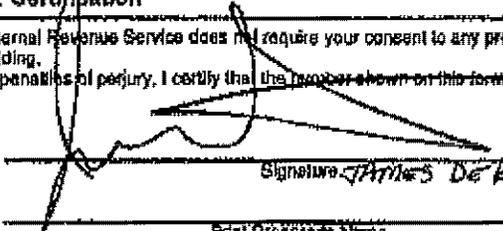
Exempt from Backup Withholding

Part V: Certification

The Internal Revenue Service does not require your consent to any provision of this document other than the certifications required to avoid backup withholding.

Under penalties of perjury, I certify that the number shown on this form is my correct Taxpayer Identification Number (TIN).

Sign Here:

 Signature JAMES DEROCATIS (732) 750-6000 3/1/12
Phone Number Date

Print Preparer's Name

Phone Number

Contact's E-Mail Address:

FOR SUBMITTING AGENCY USE ONLY

Submitting Agency Code: _____ Contact Person: _____

Contact's E-Mail Address: _____ Telephone Number: () _____

Payee/Vendor Code: _____

DO NOT FORWARD W-9 TO COMPTROLLER'S OFFICE. AGENCIES MUST FAX COMPLETED W-9 FORMS TO THE VALIDATION UNIT.

Request for Taxpayer Identification Number and Certification

Give Form to the requester. Do not send to the IRS.

Print or type See Specific Instructions on page 2.	Name (as shown on your income tax return) Hess Corporation	
	Business name/disregarded entity name, if different from above	
	Check appropriate box for federal tax classification (required): <input type="checkbox"/> Individual/sole proprietor <input checked="" type="checkbox"/> Corporation <input type="checkbox"/> S Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Trust/estate <input type="checkbox"/> Limited liability company. Enter the tax classification (C=C corporation, S=S corporation, P=partnership) <input type="checkbox"/> Exempt payee <input type="checkbox"/> Other (see instructions)	
	Address (number, street, and apt. or suite no.) One Hess Plaza	Requester's name and address (optional)
City, state, and ZIP code Woodbridge, NJ 07095		
List account number(s) here (optional)		

Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on the "Name" line to avoid backup withholding. For individuals, this is your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the Part I Instructions on page 3. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN* on page 3.

Social security number
Employer identification number (Ex. 1)

Note. If the account is in more than one name, see the chart on page 4 for guidelines on whose number to enter.

Part II Certification

Under penalties of perjury, I certify that:

1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me), and
2. I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding, and
3. I am a U.S. citizen or other U.S. person (defined below).

Certification Instructions. You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the certification, but you must provide your correct TIN. See the instructions on page 4.

Sign Here	Signature of U.S. person	Date 9/8/11
-----------	--------------------------	--------------------

General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

Purpose of Form

A person who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) to report, for example, income paid to you, real estate transactions, mortgage interest you paid, acquisition or abandonment of secured property, cancellation of debt, or contributions you made to an IRA.

Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN to the person requesting it (the requester) and, when applicable, to:

1. Certify that the TIN you are giving is correct (or you are waiting for a number to be issued),
2. Certify that you are not subject to backup withholding, or
3. Claim exemption from backup withholding if you are a U.S. exempt payee. If applicable, you are also certifying that as a U.S. person, your allocable share of any partnership income from a U.S. trade or business is not subject to the withholding tax on foreign partners' share of effectively connected income.

Note. If a requester gives you a form other than Form W-9 to request your TIN, you must use the requester's form if it is substantially similar to this Form W-9.

Definition of a U.S. person. For federal tax purposes, you are considered a U.S. person if you are:

- An individual who is a U.S. citizen or U.S. resident alien.
- A partnership, corporation, company, or association created or organized in the United States or under the laws of the United States.
- An estate (other than a foreign estate), or
- A domestic trust (as defined in Regulations section 301.7701-7).

Special rules for partnerships. Partnerships that conduct a trade or business in the United States are generally required to pay a withholding tax on any foreign partners' share of income from such business. Further, in certain cases where a Form W-9 has not been received, a partnership is required to presume that a partner is a foreign person, and pay the withholding tax. Therefore, if you are a U.S. person that is a partner in a partnership conducting a trade or business in the United States, provide Form W-9 to the partnership to establish your U.S. status and avoid withholding on your share of partnership income.

Certification 742

CERTIFICATE OF EMPLOYEE INFORMATION REPORT

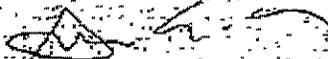
RENEWAL

This is to certify that the contractor listed below has submitted an Employee Information Report pursuant to N.J.A.C. 17:27-1.1 et seq. and the State Treasurer has approved said report. This approval will remain in effect for the period of: 15 OCT 2009 - 15 OCT 2012



HESS CORPORATION
ONE HESS PLAZA
WOODBRIIDGE

NJ 07095



Andrew P. Skamon-Epifio
Acting State Treasurer



- Who We Are
- How We Operate
- Member Services
- Existing Members
- Become a Member
- Member List
- Member List Help
- Member Forms
- Default Notification
- Comand Response
- Membership
- Careers
- Newsroom
- Industry Resources
- Exploring Tomorrow's Grid

Home > About PJM > Member Services > Member List

Member List

Below is a sortable list of PJM's members. For more information visit our [help page](#).

PJM Membership as of September 24, 2010

838 PJM Members
9 Ex officio Members
Total = 847

Filter by: Sectors: All

or by Type: All

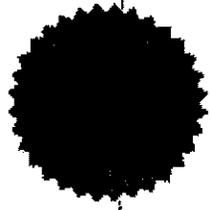
Company	Sector	Type
N.C. Energy Services (U.S.), Inc.	Other Supplier	Voting Member
Hagerstown Light Department	Electric Distributor	Voting Member
Handmade Lake Energy, L.L.C.	Generation Owner	Affiliate
Harrison REA, Inc. - Christiansburg, VA	Electric Distributor	Voting Member
Hudson Generation LLC	Generation Owner	Voting Member
HEEP Fund Inc	Other Supplier	Voting Member
HEEP Fund (PJM)	Other Supplier	Voting Member
Heide Energy Trading, LLC	Other Supplier	Voting Member
Highlands Energy Group LLC (The)	Other Supplier	Voting Member
Hoozier Energy RMC, Inc.	Other Supplier	Voting Member
Horizon Power and Light, LLC	Other Supplier	Voting Member
Horizon Wind Energy LLC	Generation Owner	Voting Member
HP Energy Resources LLC	Other Supplier	Voting Member
HEBC Technology & Services (USA), Inc.	Other Supplier	Voting Member
Hudson Energy Services, LLC	Other Supplier	Voting Member

Members: 15

DATE: 05-03-06

AUTHENTICATION: 4717448
Harriet Smith Windsor, Secretary of State

Harriet Smith Windsor



050416650

0097017 8100

I, HARRIET SMITH WINDSOR, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF AMENDMENT OF "AMERADA HESS CORPORATION", CHANGING THE NAME FROM "AMERADA HESS CORPORATION" TO "HESS CORPORATION", FILED IN THIS OFFICE ON THE THIRD DAY OF MAY, A.D. 2006, AT 2:49 O'CLOCK P.M.

The First State

Delaware

State of Delaware
Secretary of State
Division of Corporations
Delivered 02:49 PM 05/03/2006
FILED 02:49 PM 05/03/2006
SRV 060411952 - 0067017 FILE

**CERTIFICATE OF AMENDMENT OF
RESTATED CERTIFICATE OF INCORPORATION OF
AMERADA HESS CORPORATION**

Amerada Hess Corporation (the "Corporation"), a corporation organized and existing under the General Corporation Law of the State of Delaware (the "DGCL"), does hereby certify that:

The amendments to the Restated Certificate of Incorporation of the Corporation set forth below have been duly adopted in accordance with the provisions of Section 242 of the DGCL:

Article FIRST of the Restated Certificate of Incorporation of the Corporation is hereby deleted in its entirety and the following inserted in lieu thereof:

FIRST: The name of the Corporation is
Hess Corporation.

The first paragraph of Article FOURTH of the Restated Certificate of Incorporation of the Corporation is hereby deleted in its entirety and the following inserted in lieu thereof:

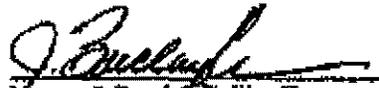
"FOURTH: The total number of shares of all classes of stock which the Corporation shall have authority to issue is 620,000,000 shares of which 20,000,000 shares shall be shares of Preferred Stock, of the par value of \$1 per share ("Preferred Stock"), and 600,000,000 shares shall be shares of Common Stock, of the par value of \$1 per share ("Common Stock")."

IN WITNESS WHEREOF, the Corporation has caused this Certificate of Amendment to be duly executed and acknowledged by J. Barclay Collins, its authorized officer, in accordance with Section 103 of the DGCL.

AMERADA HESS CORPORATION

Dated: May 3, 2006

By:


Name: J. Barclay Collins II
Title: Executive Vice President

AMERADA HESS CORPORATION

**RESTATED CERTIFICATE
OF
INCORPORATION**

AMERADA HESS CORPORATION

RESTATED CERTIFICATE OF INCORPORATION

AMERADA HESS CORPORATION, a corporation organized and existing under and by virtue of the General Corporation Law of the State of Delaware, was incorporated under the name Amerada Corporation. Its original Certificate of Incorporation was filed with the Secretary of State of Delaware on February 7, 1920.

This Restated Certificate of Incorporation was duly adopted by the Corporation's Board of Directors in accordance with the provisions of Section 245 of the General Corporation Law of the State of Delaware and only restates and integrates and does not further amend the provisions of the Corporation's Restated Certificate of Incorporation, as heretofore amended or supplemented, and there is no discrepancy between those provisions and the provisions of this Restated Certificate of Incorporation.

The text of the Restated Certificate of Incorporation as heretofore amended or supplemented is hereby restated without further amendments or changes to read as herein set forth in full:

FIRST: The name of the Corporation is

AMERADA HESS CORPORATION.

SECOND: The Corporation's registered office in the State of Delaware is located at No. 1209 Orange Street, in the City of Wilmington, County of New Castle. The name of its registered agent at such address is The Corporation Trust Company.

THIRD: The purpose for which the Corporation is formed is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of Delaware.

FOURTH: The total number of shares of all classes of stock which the Corporation shall have authority to issue is 220,000,000 shares, of which 20,000,000 shares shall be shares of Preferred Stock, of the par value of \$1 per share ("Preferred Stock"), and 200,000,000 shares shall be shares of Common Stock, of the par value of \$1 per share ("Common Stock").

The designations and the powers, preferences and rights, and the qualifications, limitations or restrictions thereof, of each class of stock of the Corporation which are fixed by this Restated Certificate of Incorporation, and the express grant of authority to the Board of Directors of the Corporation to fix by resolution or resolutions the designations and the powers, preferences and rights of each such class, and the qualifications, limitations or restrictions thereof, are as follows:

SECTION I
PREFERRED STOCK

A. THE PREFERRED STOCK AS A CLASS.

1. *General.* Shares of Preferred Stock may be issued from time to time in one or more series, provided for herein or by the Board of Directors as permitted hereby. Each series shall be so designated as to distinguish the shares thereof from the shares of all other series. All shares of Preferred Stock shall be identical, except in respect of the particulars fixed herein for the series provided for herein and the particulars fixed by the Board of Directors for series provided for by the Board of Directors as permitted hereby. All shares of any one series shall be identical in all respects with all the other shares of such series, except that if the shares of such series are entitled to cumulative dividends, such shares issued at different times may differ as to the dates from which dividends shall be cumulative.

2. *Dividends.* The holders of the Preferred Stock of each series shall be entitled to receive, when and as declared by the Board of Directors, out of funds legally available for that purpose, dividends (if any) at such rates as shall be fixed for such series herein or by the Board of Directors as permitted hereby, as the case may be, payable at such time or times as shall be fixed for such series herein or by the Board of Directors as permitted hereby to stockholders of record on the respective record dates, not more than sixty nor less than ten days preceding such time or times, fixed for that purpose by the Board of Directors. Accumulations of dividends shall not bear interest.

3. *Redemption.*

(a) *Right to Redeem and Price.* The Corporation at the option of the Board of Directors may redeem the whole or any part of the shares of Preferred Stock of any series at such time or times (if any) and at such price or prices (if any) as are provided for herein or by the Board of Directors as permitted hereby, as the case may be, for such series plus, in each case, an amount equal to all dividends (if any) accrued and unpaid on the shares of such series so to be redeemed to and including the date fixed for redemption (the total sum so payable per share on any such redemption being herein referred to as the "Redemption Price" and the date fixed for redemption being herein referred to as the "Redemption Date"), provided, however, that the foregoing option to redeem a part of the shares of Preferred Stock of any series, otherwise than by a redemption pro rata among the holders of all shares of such series, may be exercised only if dividends payable for all past quarterly dividend periods on all outstanding shares of such series have been paid, or declared and set apart for payment, in full. If fewer than all outstanding shares of any series of Preferred Stock are to be redeemed, the shares of such series to be redeemed shall be chosen by lot or pro rata in such manner as the Board of Directors may determine.

(b) *Notice and Effect of Deposit of Redemption Funds.* Notice of every such redemption shall be mailed to the holders of record of the shares of Preferred Stock so to be redeemed at their respective addresses as the same shall appear on the books of the Corporation. Such notice shall be mailed not less than thirty nor more than sixty days in advance of the Redemption Date to the holders of record of shares so to be redeemed.

If, on the Redemption Date, the funds necessary for such redemption shall have been set aside by the Corporation, separate and apart from its other funds, in trust for the pro rata benefit of the holders of the shares so called for redemption, then, notwithstanding that any certificates for shares of Preferred Stock so called for redemption shall not have been surrendered for cancellation, after the Redemption Date the right to receive dividends thereon shall cease to accrue and all rights of the holders of the shares of Preferred Stock so called for redemption shall forthwith, after the Redemption Date, cease and terminate, excepting only the right of such

holders to receive the Redemption Price for such shares but without interest, and such shares shall no longer be deemed outstanding. Any funds so set aside by the Corporation and unclaimed at the end of six years from the Redemption Date shall revert to the general funds of the Corporation, after which reversion the holders of such shares so called for redemption shall look only to the Corporation for payment of the Redemption Price.

If, on or after the giving of such notice but before the Redemption Date, the Corporation shall deposit with any transfer agent for such shares of Preferred Stock, in trust to be applied to the redemption of the shares of Preferred Stock so called for redemption, the funds necessary for such redemption, then, after the date of such deposit, all rights of the holders of the shares of Preferred Stock so called for redemption shall forthwith, after the date of such deposit, cease and terminate (excepting only the right of such holders to receive the Redemption Price therefor but without interest and the right to exercise on or before the close of business on the third business day prior to the Redemption Date any conversion privilege not theretofore expired), and such shares will not, after the date of such deposit, be deemed outstanding. Any funds so deposited which shall not be required for such redemption because of the exercise of any such right of conversion subsequent to the making of such deposit shall be returned to the Corporation. In case the holders of shares of Preferred Stock so called for redemption shall not, at the end of six years from the Redemption Date, have claimed any funds so deposited, such transfer agent shall thereupon pay over to the Corporation such unclaimed funds, and such transfer agent shall thereafter be relieved of all responsibility in respect thereof to such holders and such holders shall look only to the Corporation for payment of the Redemption Price.

(c) *Status of Recquired Shares.* Shares of any series of Preferred Stock which have been redeemed (whether through the operation of a sinking fund or otherwise) or purchased by the Corporation, or which, if convertible, have been converted into shares of stock of the Corporation of any other class or classes, shall, upon appropriate filing and recording to the extent required by law, have the status of authorized and unissued shares of Preferred Stock and may be reissued as a part of any series of Preferred Stock provided for herein or by the Board of Directors as permitted hereby.

B. PREFERRED STOCK, \$3.50 CUMULATIVE CONVERTIBLE SERIES.

There is hereby created a series of the Preferred Stock the designation, the number of shares and the terms and provisions of which (except as heretofore set forth herein) are as follows:

1. *Designation of Series and Number of Shares.* This series of the Preferred Stock shall be designated "Preferred Stock, \$3.50 Cumulative Convertible Series" (the "\$3.50 Cumulative Preferred"), to consist of 12,000,000 shares. The Board of Directors is hereby authorized by resolution, to increase or decrease (but not below the number of shares thereof then outstanding) the number of shares of the \$3.50 Cumulative Preferred.

2. *Dividends.* The holders of shares of the \$3.50 Cumulative Preferred shall be entitled to receive cumulative dividends at the rate of \$3.50 per share per annum in cash, and no more, except to the extent otherwise permitted by Paragraph 7 of this Subsection B, payable quarterly on the last days of January, April, July and October in each year. Such dividends shall accrue and become cumulative, whether or not earned or declared, as to all shares of the \$3.50 Cumulative Preferred issued on the date of the filing under the laws of Delaware of the Agreement and Plan of Merger dated as of January 15, 1969 between the Corporation and Hess Oil & Chemical Corporation, from June 20, 1969, and, as to each share of the \$3.50 Cumulative Preferred issued thereafter, from such date as shall make the dividend rights of such share the same as the dividend rights per share of the then outstanding shares of the \$3.50 Cumulative Preferred.

Except as to dividends permitted by Paragraph 7 of this Subsection B, in case dividends for any quarterly dividend period on all shares of the \$3.50 Cumulative Preferred and all shares of

all other series of the Preferred Stock ranking on a parity with the \$3.50 Cumulative Preferred as to dividends are not paid in full, all shares of the \$3.50 Cumulative Preferred and of all such other series shall participate ratably in the payment of dividends for such period in proportion to the full amounts of dividends for such period to which they are respectively entitled, provided, however, that no dividend shall be paid on any such other series for any dividend period until dividends payable on the \$3.50 Cumulative Preferred for all dividend periods prior to the first dividend period of any such other series shall have been paid, or declared and set apart for payment, in full.

So long as any shares of the \$3.50 Cumulative Preferred are outstanding, the Corporation shall not declare and pay or set apart for payment any dividends or make any other distribution on junior stock (being Common Stock or other stock of the Corporation ranking junior to the Preferred Stock as to dividends) and shall not redeem (whether through the operation of a sinking fund or otherwise), purchase or otherwise acquire, or permit any subsidiary to purchase or otherwise acquire, any shares of such junior stock, if at the time of making such declaration, payment, distribution, redemption, purchase or acquisition the Corporation shall be in default with respect to any dividend payable on, or any obligation to retire, shares of the \$3.50 Cumulative Preferred (provided, however, that, notwithstanding the foregoing, the Corporation may at any time redeem, purchase or otherwise acquire shares of such junior stock in exchange for, or out of the net proceeds from the substantially concurrent sale or other issue of, other shares of such junior stock), and the Corporation shall not redeem (whether through the operation of a sinking fund or otherwise), purchase or otherwise acquire, or permit any subsidiary to purchase or otherwise acquire, any shares of any series of the Preferred Stock, or any other class of stock of the Corporation, ranking as to dividends on a parity with the \$3.50 Cumulative Preferred, if at the time of making such redemption, purchase or acquisition the Corporation shall be in default with respect to any dividend payable on, or any obligation to retire, shares of the \$3.50 Cumulative Preferred (provided, however, that, notwithstanding the foregoing, the Corporation may at any time redeem, purchase or otherwise acquire shares of such series or class in exchange for, or out of the net proceeds from the substantially concurrent sale or other issue of, other shares of such series or class).

3. *Redemption.* The shares of the \$3.50 Cumulative Preferred may not be redeemed before June 20, 1974. On and after that date, such shares may be redeemed at \$150 per share plus an amount equal to all accrued and unpaid dividends thereon to and including the Redemption Date.

4. *Liquidation.* In the event of any voluntary or involuntary dissolution, liquidation or winding up of the affairs of the Corporation, after payment or provision for payment of the debts and other liabilities of the Corporation and all amounts due in such event on any class or series of stock of the Corporation ranking prior to the \$3.50 Cumulative Preferred upon liquidation, the holders of the \$3.50 Cumulative Preferred shall be entitled to receive, from the net assets of the Corporation (a) upon voluntary dissolution, liquidation or winding up of the affairs of the Corporation, \$150 per share; or (b) upon involuntary dissolution, liquidation or winding up of the affairs of the Corporation, \$100 per share, plus in either event an amount equal to all dividends accrued and unpaid on such share up to and including the date fixed for distribution, and no more, before any distribution shall be made to the holders of the Common Stock or other stock of the Corporation ranking junior to the Preferred Stock upon liquidation, provided that the right of the holders of the \$3.50 Cumulative Preferred so to receive such amounts in any such event shall not constitute any restriction on the right, power or authority of the Board of Directors of the Corporation to declare and pay dividends or make any other distribution on the shares of the capital stock of the Corporation.

If upon any such dissolution, liquidation or winding up of the affairs of the Corporation its net assets shall be insufficient to permit the payment in full of the respective amounts to which

the holders of all outstanding shares of the \$3.50 Cumulative Preferred and all outstanding shares of stock of the Corporation ranking on a parity upon liquidation with the \$3.50 Cumulative Preferred upon such dissolution, liquidation or winding up are entitled in such event, the entire remaining net assets of the Corporation shall be distributed among the holders of the \$3.50 Cumulative Preferred and such other stock in amounts proportionate to the full amounts to which they are respectively so entitled.

Neither the merger nor consolidation of the Corporation, nor the sale, lease or conveyance of all or a part of its assets, shall be deemed to be a voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Corporation within the meaning of this Paragraph 4.

5. *Voting Rights.*

(a) *General.* The holders of shares of the \$3.50 Cumulative Preferred shall be entitled to one vote for each share of the \$3.50 Cumulative Preferred standing in their names on the books of the Corporation in the election of directors and on any question arising at any meeting of stockholders of the Corporation at which the holders of shares of the Common Stock or other stock of the Corporation into which shares of the \$3.50 Cumulative Preferred Stock are at the time convertible have the right to vote; except that, whenever the conversion ratio of the \$3.50 Cumulative Preferred is adjusted as hereinafter in Paragraph 6 provided, the number of votes per share of the \$3.50 Cumulative Preferred shall be increased or decreased by the proportion that the total number of votes to which the aggregate of the shares of Common Stock outstanding immediately prior to the event which caused such adjustment is entitled is increased or decreased by such event; provided that (i) the number of votes per share shall in no event be decreased to less than one, (ii) no fractional vote shall result from any such increase or decrease, (iii) if the number resulting from any such increase or decrease includes a fraction which is one-half or more, the number of votes per share resulting from such increase or decrease shall include one vote for such fraction, (iv) if the number resulting from any such increase or decrease includes a fraction which is less than one-half, no vote shall be included for such fraction in the number of votes per share resulting from such increase or decrease (unless the number of votes per share would be decreased to less than one), and (v) at the time of any adjustment in the conversion ratio, all previous increases and decreases in the number of votes per share effected pursuant to the foregoing shall be disregarded, and the increase or decrease, if any, to be effected as a result of such adjustment shall be calculated as if the events which caused all such previous increases and decreases occurred at the same time as the event which caused such adjustment. The holders of the \$3.50 Cumulative Preferred and the Common Stock shall at all times vote, except as otherwise provided herein or required by law, together as one class, together with the holders of any other series or class of stock of the Corporation accorded the right to vote with the Common Stock together as one class.

(b) *Special As Class.* (i) So long as any shares of the \$3.50 Cumulative Preferred are outstanding, the Corporation shall not, without the affirmative vote at a duly authorized meeting or written consent of the holders of at least two-thirds of the aggregate number of shares at the time outstanding of the \$3.50 Cumulative Preferred and any other series of Preferred Stock accorded such class voting right, voting or consenting, as the case may be, separately as a class without regard to series,

(A) create, or increase the authorized number of shares of, any class of stock ranking, either as to dividends or upon liquidation, prior to the Preferred Stock; or

(B) alter or change any of the provisions common to the \$3.50 Cumulative Preferred and to one or more other outstanding series of Preferred Stock accorded such class voting right so as adversely to affect the preferences, special rights or powers given to the \$3.50

Cumulative Preferred and such other series of Preferred Stock, but nothing in this subdivision (B) contained shall require such a class vote or consent in connection with any increase in the total number of authorized shares of Preferred Stock or the authorization or increase of any class of stock ranking, either as to dividends or upon liquidation, on a parity with the Preferred Stock; or

(C) consolidate with or merge into, or sell or transfer all or substantially all its property and assets to, another corporation unless the corporation resulting from such consolidation or merger or to which such sale or transfer is made will have no authorized or outstanding stock ranking, either as to dividends or upon liquidation, prior to the stock which the holders of the Preferred Stock receive in such event.

(ii) So long as any shares of the \$3.50 Cumulative Preferred are outstanding, the Corporation shall not, without the affirmative vote at a duly authorized meeting or written consent of the holders of at least a majority of the shares at the time outstanding of the \$3.50 Cumulative Preferred and any other series of Preferred Stock accorded such class voting right, voting or consenting, as the case may be, separately as a class without regard to series, create, or increase the total number of authorized shares of, any class of stock ranking, either as to dividends or upon liquidation, on a parity with the Preferred Stock.

(c) *Special as Series.* So long as any shares of the \$3.50 Cumulative Preferred are outstanding, the Corporation shall not, without the affirmative vote at a duly authorized meeting or written consent of the holders of at least two-thirds of the aggregate number of shares of the \$3.50 Cumulative Preferred at the time outstanding, voting or consenting, as the case may be, separately as a series, (i) create, or increase the authorized number of shares of, any series of the Preferred Stock ranking, either as to dividends or upon liquidation, prior to the \$3.50 Cumulative Preferred, (ii) alter or change any of the provisions of the \$3.50 Cumulative Preferred, or any of the provisions of any other series, so as materially and adversely to affect the preferences, special rights or powers given to the \$3.50 Cumulative Preferred; provided, however, that where any such alteration or change affects one or more other series of Preferred Stock then outstanding in the same manner, the voting right shall be as set forth in subparagraph (b) of this Paragraph 5 or (iii) consolidate with or merge into, or sell or transfer all or substantially all its property and assets to, another corporation unless provision shall be made, as a part of the terms of such consolidation, merger, sale or transfer, whereby the holders of shares of the \$3.50 Cumulative Preferred outstanding immediately prior to such event shall be entitled to receive, on the happening of such event, in exchange for each such share so held by them, a security of the corporation resulting from such consolidation or merger or to which such sale or transfer shall be made, having dividend, voting and conversion rights and rights upon liquidation and redemption substantially equivalent to such rights as provided herein for shares of the \$3.50 Cumulative Preferred.

(d) *Right to Elect Directors.* If and whenever dividends payable on the Preferred Stock shall be in default in an aggregate amount equivalent to six full quarterly dividends on all shares of the Preferred Stock at the time outstanding, the number of directors constituting the Board of Directors shall be increased by two and the holders of the Preferred Stock shall have, in addition to any other voting rights, the exclusive and special right, voting separately as a class without regard to series, to elect two persons to fill such directorships. Whenever such right shall have vested, it shall be exercised initially at the next following election of directors by the stockholders and shall continue until the dividends in default on the Preferred Stock shall have been paid in full or funds sufficient therefor set aside, and, when such dividends are paid or provided for, such right shall terminate, subject to revesting in the event of each and every subsequent default in an aggregate amount equivalent to six full quarterly dividends.

At any meeting held for the election of directors at which the holders of shares of Preferred Stock shall have the right, voting as a class, to elect directors as herein provided, the presence, in person or by proxy, of the holders of one-third of the number of shares of Preferred Stock at the time outstanding shall be required to constitute a quorum of such class for the election of any director by the holders of such class. At any such meeting or adjournment thereof, (i) the absence of a quorum of Preferred Stock shall not prevent the election of directors other than those to be elected by the holders of shares of Preferred Stock voting as a class and the absence of a quorum for the election of such other directors shall not prevent the election of the directors to be elected by holders of shares of Preferred Stock voting as a class, and (ii) in the absence of either or both such quorums, a majority of the holders present in person or by proxy of the stock or stocks which lack a quorum shall have power to adjourn the meeting for the election of directors which they are entitled to elect from time to time, without notice other than announcement at the meeting, until a quorum shall be present. The directors elected pursuant to this subparagraph (d) shall serve until the next annual meeting or until their respective successors shall be elected and shall qualify, provided, however, that when the right of the holders of the Preferred Stock to elect directors as herein provided shall terminate, the terms of office of all persons so elected by the holders of the Preferred Stock shall terminate, and the number of directors of the Corporation shall thereupon be such number as may be provided for in the by-laws of the Corporation irrespective of any increase made pursuant to this subparagraph (d). During any period in which the holders of shares of Preferred Stock have the right to elect directors as provided for herein, any vacancy in the directors elected by the holders of the Preferred Stock shall be filled by the vote of the remaining director theretofore elected by the holders of the Preferred Stock.

6. *Conversion Rights.*

(a) *Original Conversion Price.* Subject to the provisions for adjustments hereinafter set forth, shares of the \$3.50 Cumulative Preferred shall be convertible at the option of the holder thereof, at any time on or after June 20, 1970 upon surrender to any transfer agent for the \$3.50 Cumulative Preferred of the certificate or certificates evidencing the shares so to be converted, into fully paid and nonassessable shares of Common Stock of the Corporation at the rate of 2.2 shares of Common Stock for each share of the \$3.50 Cumulative Preferred so surrendered for conversion. The right to convert shares of the \$3.50 Cumulative Preferred called for redemption shall terminate at the close of business on the third business day prior to the Redemption Date. Upon conversion, no payment or adjustment shall be made for dividends on the shares of the \$3.50 Cumulative Preferred so converted.

(b) *Adjustment of Conversion Ratio.* The number of shares of Common Stock into which each share of the \$3.50 Cumulative Preferred is convertible shall be subject to adjustment from time to time only as follows:

(i) In case the Corporation shall (A) take a record of the holders of the Common Stock for the purpose of entitling them to receive a dividend or other distribution payable in shares of stock of the Corporation of any class or series, (B) subdivide its outstanding shares of Common Stock, (C) combine its outstanding shares of Common Stock into a smaller number of shares or (D) issue by reclassification of its Common Stock any shares of the Corporation of any class or series, the holder of each share of the \$3.50 Cumulative Preferred shall thereafter be entitled to receive, upon the conversion of such share, the number of shares of stock of the Corporation which he would have owned or have been entitled to receive after the happening of any of the events described above had such share of the \$3.50 Cumulative Preferred held by him been converted immediately prior to the happening of such event, such adjustment to become effective immediately after the opening of business on the day following such record date or the day upon which such subdivision, combination or reclassification becomes effective, as the case may be, provided, however, that no such adjustment shall be made in case the Corporation shall (i) at

any time during the period prior to the date set forth in subparagraph (a) of this Paragraph 6 (but not more than once in such period) or (ii) at any time in any calendar year (but not more than once in such calendar year) take a record of the holders of the Common Stock for the purpose of entitling them to receive a dividend payable in shares of Common Stock of the Corporation, unless such dividend exceeds 2½% of the number of shares of Common Stock outstanding on the date such record is taken, in which case such adjustment shall be made but only on the basis of the amount by which the dividend exceeds 2½% of such number of shares of Common Stock outstanding.

When the Corporation takes a record of the holders of the Common Stock for the purpose of entitling them to receive a dividend or other distribution payable in shares of stock of the Corporation for which an adjustment is required pursuant to the preceding paragraph, the Corporation may in the discretion of the Board of Directors at the same time take a record of the holders of the \$3.50 Cumulative Preferred for the purpose of entitling them to receive a dividend or other distribution payable in such shares of stock of the Corporation in an amount thereof per share equal to the amount thereof which the holder of a share of the \$3.50 Cumulative Preferred would have been entitled to receive had the share held by him been converted immediately prior to such taking of a record of the holders of the Common Stock, and, in such event, no adjustment shall be made in the conversion ratio of the \$3.50 Cumulative Preferred.

For the purposes of this subparagraph (b), the term "Common Stock" means the Common Stock and any other stock of the Corporation resulting from a reclassification of the Common Stock or any such other stock.

(ii) No fractional share of stock of the Corporation shall be issued upon any conversion but, in lieu of the issuance of the fraction of a share to which the holder would otherwise have been entitled, there shall be paid to the holder of the shares of the \$3.50 Cumulative Preferred surrendered for conversion, as soon as practicable after the date such shares are surrendered for conversion, an amount in cash equal to the same fraction of the market value of a full share of the stock to be received upon the conversion, unless the Board of Directors shall determine to adjust fractional shares by the issue of fractional scrip certificates or in some other manner. For such purpose, the market value of the stock to be received upon the conversion shall be the last sales price thereof, regular way on the New York Stock Exchange, on the business day immediately preceding the date upon which the shares of the \$3.50 Cumulative Preferred are surrendered for conversion, or, in case no such sale takes place on such day, the average of the closing bid and asked prices thereof, regular way on such Exchange on such day. If shares of the stock to be received upon conversion are not then listed on the New York Stock Exchange, such market value shall be determined in the manner fixed by the Board of Directors.

(iii) No adjustment in the number of shares into which each share of the \$3.50 Cumulative Preferred is convertible shall be required unless such adjustment would require an increase or decrease of at least 1/100th of a share in the number of shares into which such share is then convertible; provided, however, that any adjustments which by reason of this subdivision are not required to be made shall be carried forward and taken into account in any subsequent adjustment.

(iv) Whenever any adjustment is required in the shares into which each share of the \$3.50 Cumulative Preferred is convertible, the Corporation shall forthwith (A) file with the transfer agent or transfer agents for the shares of the \$3.50 Cumulative Preferred a statement describing in reasonable detail the adjustment and the method of calculation used and (B) cause a copy of such notice to be mailed to the holders of record of the shares of the \$3.50 Cumulative Preferred.

(c) *Reservation of Stock for Conversions.* The Corporation shall at all times reserve and keep available out of its authorized but unissued shares the full number of shares into which all shares of the \$3.50 Cumulative Preferred from time to time outstanding are convertible, but

shares held in the treasury of the Corporation may be delivered, in the Corporation's discretion, upon any conversion of shares of the \$3.50 Cumulative Preferred.

(d) *Issue Taxes.* The Corporation will pay any and all issue and other taxes that may be payable in respect of any issue of shares on conversion of shares of the \$3.50 Cumulative Preferred pursuant hereto. The Corporation shall not, however, be required to pay any tax which may be payable in respect of any transfer involved in such issue of shares in a name other than that in which the shares so converted were registered, and no such issue shall be made unless and until the person requesting such issue has paid to the Corporation the amount of any such tax, or has established, to the satisfaction of the Corporation, that such tax has been paid.

7. *Dividends in Securities or Other Property.* In the event the Corporation shall pay on any stock of the Corporation into which shares of the \$3.50 Cumulative Preferred are at the time convertible, any dividend or other distribution consisting of securities of any corporation other than the Corporation, any evidences of indebtedness of the Corporation or any other assets (other than dividends and distributions in cash or shares of stock of the Corporation), it shall on the same date pay, on the shares of the \$3.50 Cumulative Preferred, a dividend or distribution consisting of such securities, evidences of indebtedness or other assets in an amount per share equal to the amount thereof which the holder of a share of the \$3.50 Cumulative Preferred would have been entitled to receive had the share held by him been converted immediately prior to the taking of a record of the holders of such stock of the Corporation for the purpose of entitling them to receive such dividend or distribution, such dividend or distribution on the shares of the \$3.50 Cumulative Preferred to be payable to the holders of shares of the \$3.50 Cumulative Preferred who are holders of record on the books of the Corporation on the same date as is used for the taking of a record of the holders of such stock of the Corporation for such dividend or distribution.

8. *Offers of Securities.* In the event the Corporation shall offer to sell (by issue of warrants, rights or options or otherwise) securities of the Corporation or of any other corporation to the holders of shares of any stock of the Corporation into which shares of the \$3.50 Cumulative Preferred are at the time convertible, the Corporation shall make the same offer to the holders of shares of the \$3.50 Cumulative Preferred, giving to each such holder of the \$3.50 Cumulative Preferred the right to purchase at the offer price the amount of such securities which such holder would have been entitled to purchase had he converted each share of the \$3.50 Cumulative Preferred held by him immediately prior to the taking of a record of the holders of such stock of the Corporation for the purpose of entitling them to receive such offer, such offer to the holders of shares of the \$3.50 Cumulative Preferred to be made to the holders of shares of the \$3.50 Cumulative Preferred who are holders of record on the books of the Corporation on the same date as is used for the taking of a record of the holders of such stock of the Corporation for such offer.

9. *Restriction on and Notice of Dividends.* Until such time as shares of the \$3.50 Cumulative Preferred shall be convertible at the option of the holders thereof as herein provided, the Corporation shall pay no cash dividend nor make any other cash distribution on the Common Stock in excess of quarterly dividends at the quarterly rate of 7½ cents per share, with the first such dividend to be paid after the date of the filing under the laws of Delaware of the Agreement and Plan of Merger dated as of January 15, 1969 between the Corporation and Hess Oil & Chemical Corporation to be calculated as to amount and date of payment from the last date prior to such date of filing on which a dividend was paid on the Common Stock of Hess Oil & Chemical Corporation. After such time as shares of the \$3.50 Cumulative Preferred shall be convertible at the option of the holder thereof as herein provided, and so long as any such shares remain outstanding, in the event the Corporation shall declare (i) any dividend or other distribution payable in shares of stock of the Corporation or (ii) any cash dividend or other cash distribution per share on the Common Stock in excess of 120% of the average of the cash dividends

and other cash distributions per share on the Common Stock for the four calendar quarters next preceding the calendar quarter in which such declaration occurs, then, and in any such event, the Corporation shall mail to each holder of the \$3.50 Cumulative Preferred at the address of each such holder shown in the stock records of the Corporation a notice stating the day on which the books of the Corporation shall close, or a record shall be taken, for such dividend or distribution and the amount and character of such dividend or distribution. Such notice shall be mailed at least 20 days in advance of such day therein specified.

In applying the provisions of this Paragraph 9 at any time after the Common Stock shall have been split-up or combined or after the Corporation shall have taken a record of the holders of the Common Stock for the purpose of entitling them to receive a dividend or other distribution payable in shares of stock of the Corporation of any class or series (other than a dividend payable in shares of Common Stock for which no adjustment is required to be made pursuant to subparagraph (b) of Paragraph 6 of this Subsection B), references to "7½ cents per share" and "cash dividends and distributions" shall be appropriately adjusted to reflect any such event, and for purposes of this Paragraph 9, the term "Common Stock" means the Common Stock and any other stock of the Corporation resulting from a reclassification of the Common Stock or any such other stock.

C: ADDITIONAL SERIES OF PREFERRED STOCK.

Authority is hereby expressly granted to the Board of Directors to create and provide for the issue of additional series of the Preferred Stock from time to time by resolution or resolutions, and, in connection with the creation of each such series, to fix, by the resolution or resolutions providing for the creation and issue of shares of such series, the following provisions of the shares of such series, so far as not inconsistent with the provisions of this Article FOURTH applicable to all series of Preferred Stock:

1. The designation of such series and the number of shares which shall constitute such series;
2. The provisions, if any, for dividends on shares of such series, and, if provisions are made for dividends, the dividend rate and the times at which holders of shares of such series shall be entitled to receive the dividends, whether the dividends shall be cumulative, and, if so, from which date or dates, and the other conditions, if any, including rights of priority, if any, on which the dividends shall be paid, provided, that the dividend payment dates for shares of any series ranking as to dividends on a parity with the shares of any other series shall be the same as the dividend payment dates for such other series;
3. The provisions, if any, for the redemption or purchase of shares of such series, and, if provisions are made for redemption, the time or times and the price or prices at which the shares of such series shall be subject to redemption in whole or in part, and the other terms and conditions, if any, on which shares of such series may be redeemed or purchased;
4. The rights, if any, to which holders of the shares of such series shall be entitled in the event of any voluntary or involuntary dissolution, liquidation or winding up of the affairs of the Corporation;
5. The sinking fund or purchase fund provisions, if any, for the redemption or purchase of shares of such series and, if any such fund is so provided for the benefit of such shares, the amount of such fund and the manner of its application;
6. The extent of the voting powers, if any, of the shares of such series;
7. Whether or not the shares of such series shall be convertible into, or exchangeable for, shares of any other class or classes of stock, or of any series thereof, of the Corporation, and, if so convertible or exchangeable, the conversion or exchange price or prices or rates, the

adjustments thereof and the other terms and conditions, if any, on which such shares shall be so convertible or exchangeable; and

8. Any other preferences and relative, participating, optional or other special rights, and qualifications, limitations or restrictions thereof, of shares of such series as are not fixed and determined hereby.

SECTION II COMMON STOCK

1. *Voting Rights.* Every holder of the Common Stock shall be entitled to one vote for each share of the Common Stock standing in his name on the books of the Corporation.

2. *Dividends.* Subject to the provisions of this Article FOURTH and any further provisions prescribed in accordance herewith, the holders of the Common Stock shall be entitled to receive, when and as declared by the Board of Directors, out of funds legally available for that purpose, dividends payable either in cash, stock or otherwise.

SECTION III PREEMPTIVE RIGHTS

Except as otherwise provided in Paragraph 8 of Subsection B of Section I hereof, no holder of any of the shares of the Preferred Stock or of the Common Stock shall be entitled as of right as such holder to purchase or to subscribe for any shares of stock of the Corporation whether now or hereafter authorized, or bonds, certificates of indebtedness, debentures, or other securities convertible into or carrying any right to purchase stock of the Corporation of any class, and shares of any such stock, or such other securities convertible into or carrying any right to purchase stock, may be issued and disposed of to such persons and upon such terms and for such lawful consideration as may be deemed advisable by the Board of Directors.

FIFTH: 1. *Elections of Directors.* Elections of Directors need not be by written ballot unless the By-Laws of the Corporation shall so provide.

2. *Number, Election and Terms of Directors.* Except as otherwise fixed pursuant to the provisions of Article FOURTH hereof relating to the rights of the holders of any class or series of stock having a preference over the Common Stock as to dividends or upon liquidation to elect additional directors under specified circumstances, the number of directors of the Corporation shall be fixed from time to time by or pursuant to the By-Laws. The directors, other than those who may be elected by the holders of any class or series of stock having a preference over the Common Stock as to dividends or upon liquidation, shall be classified, with respect to the time for which they severally hold office, into three classes, as nearly equal in number as possible, as determined in the manner specified in the By-Laws, one class to hold office initially for a term expiring at the annual meeting of stockholders to be held in 1986, another class to hold office initially for a term expiring at the annual meeting of stockholders to be held in 1987, and another class to hold office initially for a term expiring at the annual meeting of stockholders to be held in 1988, with the members of each class to hold office until their successors are elected and qualified. At each annual meeting of the stockholders of the Corporation, the successors to the class of directors whose term expires at that meeting shall be elected to hold office for a term expiring at the annual meeting of stockholders held in the third year following the year of their election.

3. *Stockholder Nomination of Director Candidates.* Advance notice of nominations for the election of directors, other than by the Board of Directors or a Committee thereof, shall be given in the manner provided in the By-Laws.

4. *Newly Created Directorships and Vacancies.* Except as otherwise fixed pursuant to the provisions of Article FOURTH hereof relating to the rights of the holders of any class or series of stock having a preference over the Common Stock as to dividends or upon liquidation to elect directors under specified circumstances, newly created directorships resulting from any increase in the number of directors and any vacancies on the Board of Directors resulting from death, resignation, disqualification, removal or other cause shall be filled solely by the affirmative vote of a majority of the remaining directors then in office, even though less than a quorum of the Board of Directors. Any director elected in accordance with the preceding sentence shall hold office for the remainder of the full term of the class of directors in which the new directorship was created or the vacancy occurred and until such director's successor shall have been elected and qualified. No decrease in the number of directors constituting the Board of Directors shall shorten the term of any incumbent director.

5. *Removal of Directors.* Subject to the rights of the holders of any class or series of stock having a preference over the Common Stock as to dividends or upon liquidation to elect directors under specified circumstances, any director may be removed from office, with or without cause, but only by the affirmative vote of the holders of at least 80% of the combined voting power of the then outstanding shares of capital stock of the Corporation entitled to vote generally in the election of directors, voting together as a single class.

6. *Stockholder Action.* Any action required or permitted to be taken by the stockholders of the Corporation must be effected at a duly called annual or special meeting of such holders and may not be effected by any consent in writing by such holders. Except as otherwise required by law and subject to the rights of the holders of any class or series of stock having a preference over the Common Stock as to dividends or upon liquidation, special meetings of stockholders of the Corporation may be called only by the Chairman of the Board or the President, and shall be called by the Secretary at the request of the Board of Directors pursuant to a resolution approved by a majority of the entire Board of Directors. For purposes of this Article FIFTH, the term "entire Board of Directors" means the total number of directors which the Corporation would have if there were no vacancies.

7. *By-Law Amendments.* The Board of Directors shall have power to make, alter, amend and repeal the By-Laws (except so far as the By-Laws adopted by the Stockholders shall otherwise provide). Any By-Laws made by the directors under the powers conferred hereby may be altered, amended or repealed by the directors or by the stockholders. Notwithstanding the foregoing and anything contained in this Restated Certificate of Incorporation to the contrary, Sections 7 and 10 of Article III, Sections 1, 6, 8 and 9 of Article IV and Article XIV of the By-Laws shall not be altered, amended or repealed and no provision inconsistent therewith shall be adopted without the affirmative vote of the holders of at least 80% of the combined voting power of all the then outstanding shares of capital stock of the Corporation entitled to vote generally in the election of directors, voting together as a single class.

8. *Amendment, Repeal, etc.* Notwithstanding anything contained in this Restated Certificate of Incorporation to the contrary, the affirmative vote of the holders of at least 80% of the combined voting power of all the then outstanding shares of capital stock of the Corporation entitled to vote generally in the election of directors, voting together as a single class, shall be required to alter, amend, adopt any provision inconsistent with, or repeal, this Article FIFTH or any provision hereof.

SIXTH: In furtherance and not in limitation of the powers conferred by statute, the Board of Directors is expressly authorized:

To make, alter or repeal the By-Laws. Any By-Laws made by the Board of Directors under the power conferred hereby may be altered or repealed by the directors or stockholders.

From time to time, without the assent or vote of the stockholders, to fix the times for the declaration and payment of dividends, and to fix the amount to be reserved as working capital, over and above its capital stock paid in, and to authorize and cause to be executed mortgages and liens upon all the property of the Corporation or any part thereof.

From time to time to sell any or all of the then unissued capital stock of the Corporation, whether the same be any of the original of its capital or of any increase thereof, without (subject to the terms hereof) first offering the same to the stockholders then existing, and all such sales may be made upon such terms and conditions as the Board of Directors may deem advisable.

From time to time to determine whether and to what extent and at what times and places and under what conditions and regulations the accounts and books of the Corporation (other than the stock ledger), or any of them shall be open to the inspection of the stockholders; and no stockholder shall have any right of inspecting any account, book or document of the Corporation, except as conferred by statute; unless authorized by resolution of the stockholders or directors.

If the By-Laws so provide, to designate two or more of its number to constitute an Executive Committee, which Committee shall for the time being, as provided by resolution of the Board of Directors or in the By-Laws of the Corporation, have and exercise any or all of the powers of the Board of Directors in the management of the business and affairs of the Corporation, and have power to authorize the seal of the Corporation to be affixed to all papers which may require it.

The Corporation may in its By-Laws confer powers upon its directors in addition to the foregoing and in addition to the powers and authorities expressly conferred upon them by the statute.

SEVENTH: A sale, lease or exchange of all or substantially all of the property and assets of the Corporation shall require the authorization thereof by the affirmative vote of the holders of two-thirds of the stock issued and outstanding having voting power at a stockholders' meeting duly called upon at least 20 days notice containing notice of the proposed sale, lease or exchange.

EIGHTH: The Corporation reserves the right to amend, alter, change or repeal any provision contained in this Restated Certificate of Incorporation, in the manner now or hereafter prescribed by statute, and all rights conferred upon stockholders herein are granted subject to this reservation.

NINTH: The following provisions shall apply in addition to any other affirmative vote required by law or this Restated Certificate of Incorporation:

SECTION I

CERTAIN BUSINESS COMBINATIONS

The affirmative vote of the holders of not less than two-thirds of the outstanding shares of Voting Stock (as hereinafter defined) held by stockholders other than the Acquiring Person (as hereinafter defined) with which or by or on whose behalf, directly or indirectly, a Business Combination (as hereinafter defined) is proposed, voting as a single class, shall be required for the approval or authorization of such Business Combination. Notwithstanding the foregoing, the two-thirds voting requirement shall not be applicable if such Business Combination is approved by the Corporation's Board of Directors prior to the Acquiring Person becoming such or if the cash or fair market value of the property, securities or other consideration to be received per share by holders of shares of each class of Voting Stock in such Business Combination as of the date of consummation thereof is an amount not less than the higher of (a) the Highest Per Share Price or the Highest Equivalent Price (as these terms are hereinafter defined) paid by such Acquiring Person in acquiring any of its holdings of Voting Stock, and (b) the Fair Market Price

(as hereinafter defined) of such class of Voting Stock determined on the date the proposal for such Business Combination was first publicly announced, and such consideration shall be in the same form and of the same kind as the consideration paid by such Acquiring Person in acquiring the shares of Voting Stock already acquired by it. If the Acquiring Person has paid for shares of Voting Stock with varying forms of consideration, the form of consideration to be received by the holders of Voting Stock shall be the form used to acquire the largest number of shares of Voting Stock acquired by such Acquiring Person.

SECTION II

DEFINITIONS, ETC.

For purposes of this Article NINTH:

1. *Business Combination.* The term "*Business Combination*" shall mean (a) any merger or consolidation of the Corporation or a subsidiary of the Corporation with or into an Acquiring Person, (b) any sale, lease, exchange, transfer or other disposition, including, without limitation, a mortgage or any other security device, in a single transaction or related series of transactions, of all or any Substantial Part (as hereinafter defined) of the assets either of the Corporation (including without limitation any voting securities of a subsidiary) or of a subsidiary of the Corporation to an Acquiring Person, (c) any merger or consolidation of an Acquiring Person with or into the Corporation or a subsidiary of the Corporation, (d) any sale, lease, exchange, transfer or other disposition, including without limitation a mortgage or other security device, in a single transaction or related series of transactions, of all or any Substantial Part of the assets of an Acquiring Person to the Corporation or a subsidiary of the Corporation, (e) the issuance of any securities of the Corporation or a subsidiary of the Corporation to an Acquiring Person, (f) any recapitalization, merger or consolidation that would have the effect of increasing the voting power of an Acquiring Person, (g) the adoption of any plan or proposal for the liquidation or dissolution of the Corporation proposed, directly or indirectly, by or on behalf of an Acquiring Person, (h) any merger or consolidation of the Corporation with a subsidiary of the Corporation proposed by or on behalf of an Acquiring Person, unless the surviving or consolidated corporation, as the case may be, has a provision in its certificate of incorporation substantially identical to this Article NINTH, and (i) any agreement, contract or other arrangement providing for any of the transactions described in this definition of Business Combination. A person who is an Acquiring Person as of (x) the time any definitive agreement relating to a Business Combination is entered into, (y) the record date for the determination of stockholders entitled to notice of and to vote on a Business Combination, or (z) immediately prior to the consummation of a Business Combination shall be deemed an Acquiring Person for purposes of this definition.

2. *Acquiring Person.* The term "*Acquiring Person*" shall mean and include any individual, corporation (other than the Corporation), partnership or other person or entity which, together with its Affiliates and Associates (as defined in Rule 12b-2 of the General Rules and Regulations under the Securities Exchange Act of 1934 as in effect at March 2, 1983 (collectively, and as so in effect, the "Exchange Act")), and with any other individual, corporation (other than the Corporation), partnership or other person or entity with which it or they have any agreement, arrangement or understanding with respect to acquiring, holding, voting or disposing of Voting Stock, Beneficially Owns (as defined in Rule 13d-3 of the Exchange Act) in the aggregate 20% or more of the outstanding Voting Stock of the Corporation. A person or entity, its Affiliates and Associates and all such other persons or entities with whom they have any such agreement, arrangement or understanding shall be deemed a single Acquiring Person for purposes of this Article NINTH.

3. *Substantial Part.* The term "*Substantial Part*" shall mean an amount equal to more than 20% of the fair market value of the total consolidated assets of the Corporation and its subsidiaries taken as a whole as of the end of its most recent fiscal year ended prior to the time the determination is being made.

4. *Rights to Acquire.* Without limitation, any share of Voting Stock of the Corporation that any Acquiring Person has the right to acquire at any time (notwithstanding that Rule 13d-3 of the Exchange Act deems such shares to be beneficially owned only if such right may be exercised within 60 days) pursuant to any agreement, or upon exercise of conversion rights, warrants or options, or otherwise, shall be deemed to be Beneficially Owned by the Acquiring Person and to be outstanding for purposes of Paragraph 2 of this Section II.

5. *Other Consideration to Be Received.* For the purposes of Section I of this Article NINTH, the term "other consideration to be received" shall include, without limitation, Common Stock, Preferred Stock or other capital stock of the Corporation retained by its existing stockholders other than the Acquiring Person with which or by or on whose behalf, directly or indirectly, a Business Combination has been proposed or other parties to such Business Combination in the event of a Business Combination in which the Corporation is the surviving corporation.

6. *Voting Stock.* The term "Voting Stock" shall mean all of the outstanding shares of capital stock of the Corporation entitled to vote on each matter on which the holders of record of Common Stock of the Corporation shall be entitled to vote, and each reference to a percentage of shares of Voting Stock shall refer to such percentage of the votes entitled to be cast by such shares.

7. *Time of Acquisition.* An Acquiring Person shall be deemed to have acquired a share of the Voting Stock of the Corporation at the time when such Acquiring Person became the Beneficial Owner thereof. The price paid by an Acquiring Person for such shares held by a person or entity at the time it became part of such Acquiring Person shall be deemed to be the higher of (a) the price paid upon the acquisition thereof by such person or entity and (b) the market price of the shares in question at the time when such person or entity became part of such Acquiring Person.

8. *Highest Per Share Price; Highest Equivalent Price.* The terms "Highest Per Share Price" and "Highest Equivalent Price" as used in this Article NINTH shall mean the following: If there is only one class of capital stock of the Corporation issued and outstanding, the Highest Per Share Price shall mean the highest per share price that can be determined to have been paid at any time by the Acquiring Person by or on whose behalf, directly or indirectly, the Business Combination has been proposed for any share or shares of that class of capital stock. If there is more than one class of capital stock of the Corporation issued and outstanding, the Highest Equivalent Price shall mean, with respect to each class and series of capital stock of the Corporation, the highest per share price equivalent of the highest price that can be determined to have been paid at any time by such Acquiring Person for any share or shares of any class or series of capital stock of the Corporation. In determining the Highest Per Share Price and Highest Equivalent Price, all purchases by an Acquiring Person shall be taken into account regardless of whether the shares were purchased before or after the Acquiring Person became an Acquiring Person. Also, the Highest Per Share Price and the Highest Equivalent Price shall include any brokerage commissions, transfer taxes and soliciting dealers' fees paid by the Acquiring Person with respect to the shares of capital stock of the Corporation acquired by the Acquiring Person. The Highest Per Share Price and the Highest Equivalent Price shall be appropriately adjusted to take into account stock dividends, subdivisions, combinations and reclassifications.

9. *Fair Market Price.* The term "Fair Market Price" shall mean for any class of Voting Stock the highest closing sale price during the 30-day period immediately preceding the date in question of a share of such class of Voting Stock on the Composite Tape for New York Stock Exchange-listed stocks, or, if such class of Voting Stock is not quoted on the Composite Tape, on the New York Stock Exchange, or, if such class of Voting Stock is not listed on such Exchange, on the principal United States securities exchange registered under the Securities Exchange Act of 1934 on which such class of Voting Stock is listed, or, if such class of Voting Stock is not listed

on any such exchange, the highest closing bid quotation with respect to a share of such class of Voting Stock during the 30-day period preceding the date in question on the National Association of Securities Dealers, Inc. Automated Quotations System or any system then in use, or if no such quotations are available, the fair market value on the date in question of a share of such stock.

SECTION III

AMENDMENT

The provisions set forth in this Article NINTH may not be amended, altered, changed or repealed in any respect unless such action is approved by the affirmative vote of the holders of not less than two-thirds of the outstanding shares of Voting Stock of the Corporation at a meeting of the stockholders duly called for the consideration of such amendment, alteration, change or repeal; provided, however, that if such action has been proposed, directly or indirectly, on behalf of an Acquiring Person, it must also be approved by the affirmative vote of the holders of not less than two-thirds of the outstanding shares of Voting Stock held by the stockholders other than such Acquiring Person.

TENTH: A director of the Corporation shall not be personally liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director, except for liability which would otherwise exist under applicable law (i) for any breach of the director's duty of loyalty to the Corporation or its stockholders, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) under Section 174 of the General Corporation Law of the State of Delaware or (iv) for any transaction from which the director derived an improper personal benefit. Any repeal or modification of, or adoption of any provision of this Restated Certificate of Incorporation inconsistent with, this Article TENTH by the stockholders of the Corporation or in any other manner as may be permitted by law shall be prospective only and shall not adversely affect any limitation on the personal liability of a director of the Corporation existing at the time of such repeal, modification or adoption.

IN WITNESS WHEREOF, this Restated Certificate of Incorporation has been executed on behalf of Amerada Hess Corporation by its Chairman of the Board, under its corporate seal, and attested by its Secretary this August 15, 1988.

AMERADA HESS CORPORATION

[CORPORATE SEAL]

By: LEON HESS
Chairman of the Board

Attest: CARL T. TURSI
Secretary

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 I."

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:

$$\frac{[(\text{Consumption During Billing Period}) - (\text{Maximum Monthly Consumption Amount})] \times (\text{Spot Energy Price})}{\text{Maximum Monthly Consumption Amount}}$$

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:

$$\frac{[(\text{Minimum Monthly Consumption Amount}) - (\text{Consumption During Billing Period})] \times [(\text{Contract Rate}) - (\text{Spot Energy Price})]}{(\text{Minimum Monthly Consumption Amount})}$$

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 1 in 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 initiated 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.

THE PORT AUTHORITY OF NY & NJ

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

9/5/2012

ADDENDUM # 3

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
- Originally due on 9/7/2012, no later than 2:00PM

CHANGES/MODIFICATIONS

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

- A. In Part I, Standard Information for Bidders, section 2, General Information: Solicitation Process and Schedule, paragraph b, Procurement Schedule, the following Milestone Dates have changed:
- "Post Questions and Answers" has been changed from 8/31/2012 to on/before 9/7/2012.
 - "Statement of Prerequisites Due" has been changed from 9/7/2012 to 9/14/2012.
 - "Pre-Qualification Notifications Issued" has been changed from 9/14/2012 to on/before 9/18/2012.
 - "Online Reverse Electricity Auction(s)" has been changed from 9/18/2012 to 9/25/2012.

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.

THE PORT AUTHORITY OF NY & NJ

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

8/22/2012

ADDENDUM # 2

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 9/7/2012, no later than 2:00PM
- Originally due on 9/7/2012, no later than 2:00PM

I. CHANGES/MODIFICATIONS

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

1. In reference to Part V, section 1b, remove paragraph 2 in its entirety and replace with the following:

"2. Index RT Fixed Adder 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 must be associated with the PJM Real-Time market for the applicable load zone with a fixed retail adder charge. The retail adder for the applicable PJM Real-Time market load zone should include all applicable capacity charges, transmission charges, ancillary services, balancing operating reserve charge, RPS, New Jersey State Sales and Use Tax and WES procurement fee. Line losses and RMR must be treated as pass-through charges for this product.

(ii) For Accounts in the State of New York: Price for the commodity must be associated with the NYISO Real-Time market for the applicable load zone with a fixed retail adder charge. The retail adder for the applicable NYISO Real-Time market load zone should include all applicable capacity charges, ancillary services, balancing operating reserve charge, and WES procurement fee. Line losses and RMR must be treated as pass-through charges for this product."

PS11AII

2. In reference to Part V, section 1b, add paragraphs 3, 4, 5, 6, and 7 below:

“3. Index DA Fixed Adder 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 must be 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, DA operating reserve charge, RPS, New Jersey State Sales and Use Tax and WES procurement fee. Line losses and RMR must be treated as pass-through charges for this product.

(ii) For Accounts in the State of New York: Price for the commodity must be 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, ancillary services, DA operating reserve charge, and WES procurement fee. Line losses and RMR must be treated as pass-through charges for this product.

4. Index RT All Pass-thru: 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.

The only components to be included in this price are the supplier's margin and the World Energy fee. All other pricing components should be treated as a pass through.

(i) For Accounts in the State of New Jersey: Price for the commodity must be associated with the PJM Real-Time market for the applicable load zone.

(ii) For Accounts in the State of New York: Price for the commodity must be associated with the NYISO Real-Time market for the applicable load zone.

5. Index DA All Pass-thru: 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.

The only components to be included in this price are the supplier's margin and the World Energy fee. All other pricing components should be treated as a pass through.

(i) For Accounts in the State of New Jersey: Price for the commodity must be associated with the PJM Day Ahead market for the applicable load zone.

(ii) For Accounts in the State of New York: Price for the commodity must be associated with the NYISO Day Ahead market for the applicable load zone.

6. Index RT CAP/TRAN Pass-thru: 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 must be associated with the PJM Real-Time market for the applicable load zone with a fixed retail adder charge. The retail adder for the applicable PJM Real-Time market load zone should include all ancillary services, balancing operating reserve charge, RPS, New Jersey State Sales and Use Tax and WES procurement fee. Line losses, RMR, applicable capacity charges, and transmission charges must be treated as a pass-through charge for this product.

(ii) For Accounts in the State of New York: Price for the commodity must be associated with the NYISO Real-Time market for the applicable load zone with a fixed retail adder charge. The retail adder for the applicable NYISO Real-Time market load zone should include all applicable ancillary services, balancing operating reserve charge, and WES procurement fee. Line losses, RMR, and applicable capacity charges must be treated as a pass-through charge for this product.

7. Index DA CAP/TRAN Pass-thru: 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 must be 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 ancillary services, DA operating reserve charge, RPS, New Jersey State Sales and Use Tax and WES procurement fee. Line losses, RMR, and applicable capacity charges must be treated as a pass-through charge for this product.

(ii) For Accounts in the State of New York: Price for the commodity must be 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, ancillary services, DA operating reserve charge, and WES procurement fee. Line losses, RMR, and applicable capacity charges must be treated as a pass-through charge for this product.

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 Bidder 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: Is this procurement a post and respond or will it be an auction?

A1: The Port Authority is utilizing an internet-based energy auction platform to obtain pricing for this procurement. Please see Part I, section 2, General Information: Solicitation Process and Schedule, for additional information.

Q2: What facility types will this electricity be serving?

A2: Electricity will serve a range of facility types, including public transit facilities, airports, interstate tunnels, and small to medium commercial buildings. We have grouped accounts by rate class in Appendix 1 of this solicitation. Appendix 1 also includes monthly and interval data for the accounts included in this solicitation that will give you insight into load-shapes, etc. If you do not have a copy of the Appendix 1, please see Part II, section 12, Available Documents, for instructions on how to obtain this information.

Q3: For companies that are privately held, are there any documents you would consider in lieu of publicly distributed financial statement ?

A3: Please see Part I, Section 13 paragraph a(1)(ii) and a(1)(iii)

(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.

Q4: Has this solicitation been set aside for Port Authority certified minority, woman or small business enterprises?

A4: No.

Q5: Since suppliers are being asked to include all applicable taxes in their bids, could the Port Authority please provide a list of taxes, state and federal, that should be included?

A5: The only tax that should be included in your bid is the New Jersey Sales and Use tax as it applies to New Jersey accounts.

Q6: Are exceptions to the solicitation language allowed?

A6: The Port Authority will consider exceptions requested during the Q&A period but makes no guarantee or representation as to a response. If applicable, responses will be issued via an addendum. Unless otherwise addressed via an addendum, no exceptions to the terms and conditions are allowed.

Q7: In Part III of the solicitation, Change in Law, if transmission and capacity obligations and rates change during the time of the contract, does the Change in Law portion allow for that change to be passed along?

A7: Please note this correction from what was said on the call: Changes in transmission and capacity obligation tags will not be considered a change in law. If and only if PJM posts new charges for transmission will suppliers have a right to use the change in law provision to pass through any increase/decrease. However, there are multiple index pricing products for which we are asking that transmission and capacity be treated as pass-thru charges.

Q8: For the Index All Pass-Thru pricing products, what elements does the Port Authority expect suppliers to pass through?

A8: Everything except the supplier margin and broker fee.

Q9: Do the Standard Contract Terms and Conditions make up the contract that will ultimately be signed for this supply contract?

A9: The entire solicitation -- i.e. the Standard Contract Terms and Conditions, Parts I -- V, and any addendum -- will be considered part of the supply contract. Part IV should be signed and returned with your pre-qualification package. Additionally, any addendum released must be signed and returned with your pre-qualification package.

Q10: Will qualified suppliers be prohibited from bidding if only licensed to serve New Jersey accounts?

A10: If you are only licensed to serve New Jersey accounts, you can still participate in the procurement. Your participation will be restricted to those account groups that only contain New Jersey accounts.

Q11: Can qualified suppliers choose to only bid on certain pricing products/account groups/term lengths/etc?

A11: Yes. Suppliers are under no obligation to bid on every account group, term length, pricing product, etc. If, for instance, you do not wish to bid on a 48 month term, you can bid on just the 12, 24, and 36 month terms and not submit a bid for the 48 month term. Please note however, that if you do bid on an account group, every single account within that group must be included in your bid.

Q12: In Part III, Section 7, is adding/deleting accounts done under the "bandwidth" percentage that governs that particular award?

A12: Yes, but this is not a traditional bandwidth. (For the accounts requesting fixed pricing, the Port Authority is requesting a traditional bandwidth of 25%.) This clause allows the Port Authority to completely delete an account or add an entirely new account at the same contract rate awarded through the auction.

E.g. Suppose the award looks like this:

\$0.05/kWh
100,000,000 kWh
24 month term
5% add/delete

If that's the case, the Port Authority will have the right to add new accounts to the contract, at the \$0.05/kWh rate, so long as the total load of accounts added does not exceed 5,000,000 kWh.

Q13: In Part V, Section 1a, "Consumption During Billing Period," is the Port Authority requiring billing based on calendar month or meter reads?

A13: The Port Authority will require billing to be consistent with utility meter reads.

Q14: Will the Port Authority consider a single-bill option?

A14: If a supplier prefers the single-bill option and is willing to provide the Port Authority with a summary each month of what each contracted account used and was charged, Port Authority may consider it. Such a supplier will need to spell out this preference as well as the summary procedure in its pre-qualification response. Please note that the Port Authority will certainly allow for dual billing.

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 EQIB 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

PS11A11

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.

THE PORT AUTHORITY OF NY & NJ

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

8/17/2012

ADDENDUM # 1

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 9/7/2012, no later than 2:00PM

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

- A. Part II, Contract Specific Information for Bidders, section 9, Pre-Submittal Conference Call, the call-in number has been changed to "877-807-5706". The password remains unchanged.
- B. In Part I, Standard Information for Bidders, section 2, General Information: Solicitation Process and Schedule, paragraph 2b, Procurement Schedule, Milestone for "Online Reverse Electricity Auction(s)" has been changed from "9/18/12" to "9/19/12".

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.

PS11A11

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

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

PART I - STANDARD INFORMATION FOR BIDDERS, TABLE OF CONTENTS

1. General Information: The Port Authority of New York and New Jersey..... 3
2. General Information: Solicitation Process and Schedule..... 3
3. Form and Submission of Statement of Prerequisites (Pre-Qualification)..... 4
4. Form and Submission of Bid 5
5. Vendor Profile..... 5
6. Acknowledgment of Addenda 5
7. Firm Offer 6
8. Acceptance or Rejection of Bids..... 6
9. Prospective Bidder's Questions 6
10. Additional Information To and From Bidders 7
11. Assessment of Bid Requirements 7
12. Bidder's Prerequisites 7
13. Qualification Information 7
14. Available Documents - General..... 10
15. Pre-Commencement Meeting 10
16. Additional Bidder Information 10

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 an area of about 1,500 square miles in both States, centering about New York Harbor. The Port District includes the Cities of New York and Yonkers in New York State, and the cities of Newark, Jersey City, Bayonne, Hoboken and Elizabeth in the State of New Jersey, and over 200 other municipalities, including all or part of seventeen counties, in the two States. The 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 SCHEDULE¹	
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 <http://www.panynj.gov/business-opportunities/> 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 and Job Opportunity (OBJO) 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>

**PART II – CONTRACT SPECIFIC INFORMATION FOR BIDDERS,
TABLE OF CONTENTS**

1.	Service(s) Required.....	2
2.	Location(s) Services Required.....	2
3.	Expected Date of Commencement of Contract	2
4.	Contract Type.....	2
5.	Duration of Contract	2
6.	Price Adjustment during Base Term (Index Based)	2
7.	Option Period(s).....	2
8.	Extension Period	2
9.	Pre-submittal Conference Call.....	2
10.	Specific Bidder's Prerequisites	3
11.	Bidder's Additional Submittal Requirements.....	4
12.	Available Documents	4

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.

**PART III – CONTRACT SPECIFIC TERMS AND CONDITIONS,
TABLE OF CONTENTS**

1.	General Agreement.....	2
2.	Duration.....	2
3.	Billing.....	2
4.	Payment.....	5
5.	Price Adjustment.....	7
6.	Contractor Performance.....	7
7.	Increase and Decrease in Number of Accounts.....	7
8.	Title to Electricity.....	8
9.	Force Majeure.....	8

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**

TABLE OF CONTENTS

1. SIGNATURE SHEET	2
2. NAME AND RESIDENCE OF PRINCIPALS SHEET.....	4
3. AUCTION PRICING.....	5
4. FEE STRUCTURE	6

**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>

PART V – SPECIFICATIONS, TABLE OF CONTENTS

PART V – SPECIFICATIONS, TABLE OF CONTENTS..... 1
1a. Specific Definitions..... 2
1b. Pricing Product Instructions..... 4
2. Work Required by the Specifications 5

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:

$$[(\text{Consumption During Billing Period}) - (\text{Maximum Monthly Consumption Amount})] \times (\text{Day Ahead Load Weighted Average})$$

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:

$$[(\text{Minimum Monthly Consumption Amount}) - (\text{Consumption During Billing Period})] \times [(\text{Real Time Locational Marginal Price}) - (\text{Contract Rate})]$$

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:

$(\text{Bandwidth \%} + 100\%) \times (\text{historical usage during the relevant Billing Period as set forth on Appendix I}).$

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:

$(100\% - \text{Bandwidth } \%) \times (\text{historical usage during the relevant Billing Period as set forth on Appendix I}).$

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.

STANDARD CONTRACT TERMS AND CONDITIONS	
STANDARD CONTRACT TERMS AND CONDITIONS.....	2

PART I GENERAL DEFINITIONS.....	2
--	----------

PART II GENERAL PROVISIONS.....	3
--	----------

1. Facility Rules and Regulations of The Port Authority	3
2. Contractor Not An Agent.....	3
3. Contractor's Warranties	4
4. Personal Non-Liability.....	4
5. Equal Employment Opportunity, Affirmative Action, Non-Discrimination.....	4
6. Rights and Remedies of the Port Authority	5
7. Rights and Remedies of the Contractor	5
8. Submission To Jurisdiction.....	5
9. Harmony	6
10. Claims of Third Persons	6
11. No Third Party Rights.....	6
12. Provisions of Law Deemed Inserted.....	6
13. Costs Assumed By The Contractor.....	7
14. Default, Revocation or Suspension of Contract	7
15. Sales or Compensating Use Taxes.....	10
16. No Estoppel or Waiver	10
17. Records and Reports	10
18. General Obligations	11
19. Assignments and Subcontracting.....	11
20. Indemnification and Risks Assumed By The Contractor	12
21. Approval of Methods	13
22. Modification of Contract	13
23. Invalid Clauses.....	13
24. Contract Records and Documents – Passwords and Codes.....	13
25. Confidential Information/Non-Publication.....	13
26. Time is of the Essence	14
27. Personnel Standards.....	14
28. Manager's Authority.....	14
29. Price Preference.....	15
30. M/WBE Good Faith Participation	15

PART III CONTRACTOR'S INTEGRITY PROVISIONS.....	16
--	-----------

1. Certification of No Investigation (criminal or civil anti-trust), Indictment, Conviction, Debarment, Suspension, Disqualification and Disclosure of Other Information.....	16
2. Non-Collusive Bidding, and Code of Ethics Certification, Certification of No Solicitation Based On Commission, Percentage, Brokerage, Contingent or Other Fees.....	16
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.....	18
4. No Gifts, Gratuities, Offers of Employment, Etc.	18
5. Conflict of Interest.....	19
6. Definitions	19

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:

- o The principal place of business must be located in New York or New Jersey;
- o The firm must have been in business for at least three years with activity;
- o 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.

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

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.

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.