

**Torres Rojas, Genara**

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**From:** dmorris@tectonicengineering.com  
**Sent:** Thursday, August 07, 2014 8:57 AM  
**To:** Duffy, Daniel; American, Heavyn-Leigh  
**Cc:** Torres Rojas, Genara; Van Duyne, Sheree  
**Subject:** Freedom of Information Online Request Form

Information:

First Name: David  
Last Name: Morris  
Company: Tectonic Engineering  
Mailing Address 1: 160 Pehle Avenue, Suite 306 Mailing Address 2:  
City: Saddle Brook  
State: NJ  
Zip Code: 07663  
Email Address: dmorris@tectonicengineering.com  
Phone: 2018430403  
Required copies of the records: Yes

List of specific record(s):

Request for 426-06-017-10 WTC-FT Subsurface Investigation awarded to Warren George, Inc. of Jersey City, NJ on 7292008 Reference 4900004092.

**THE PORT AUTHORITY OF NY & NJ**

FOI Administrator

October 15, 2014

Mr. David Morris  
Tectonic Engineering  
160 Phele Avenue, Suite 306  
Saddle Brook, NJ 07663

Re: Freedom of Information Reference No. 15177

Dear Mr. Morris:

This is in response to your August 7, 2014 request, which has been processed under the Port Authority's Freedom of Information Code (the "Code", copy attached) for a copy of "426-06-017-10 WTC-FT Subsurface Investigation awarded to Warren George, Inc. of Jersey City, NJ on 7292008 Reference 4900004092."

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/15177-C.pdf>. Paper copies of the available records are available upon request.

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

Sincerely,



Heavyn-Leigh American  
FOI Officer

Attachment



**THE PORT AUTHORITY** OF NY & NJ

**P.A. Agreement #426-06-017**  
June 16, 2006

*Engineering Department*

Warren George, Inc.  
P. O. Box 413, Foot of Jersey Avenue  
Jersey City, NJ 07303

Attention: Frank Gregory, President

**SUBJECT: PERFORMANCE OF EXPERT TEST BORINGS AND MONITOR WELL  
INSTALLATION SERVICES AS REQUESTED ON A "CALL-IN" BASIS  
DURING 2006, 2007 AND 2008**

Dear Mr. Gregory:

1. The Port Authority of New York and New Jersey (hereinafter referred to as the "Authority") hereby offers to retain Warren George, Inc. (hereinafter referred to as "the Contractor" or "you") to provide expert technical services as more fully set forth in Attachment A, which is attached hereto and made a part hereof, on a "call-in" basis during 2006, 2007 and 2008.

Wherever the term "Authority" is used, it shall be deemed to include the Port Authority and its Commissioners, Officers and Employees, its wholly-owned subsidiary, Port Authority Trans-Hudson Corporation (PATH), its Directors, Officers and Employees and any other wholly owned subsidiary of the Authority and its Directors, Officers and Employees.

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

If the Authority accepts any Proposals, it may accept more than one Proposal to perform the work specified in the Specifications herein; one Proposal as the primary Contractor and additional Proposals as backup Contractor.

As used herein "Chief Engineer" shall mean the Chief Engineer, or the Deputy Chief Engineer of the Authority, acting either personally or through their duly authorized representatives acting within the scope of the particular authority vested in them unless specifically stated to mean acting personally. No representative of the Chief Engineer shall be considered authorized except to the extent expressly stated by written notice to the Contractor.

No one will be permitted to enter upon Authority property to inspect the construction sites without the approval of the Engineer of Construction or other duly authorized representative of the Authority.

For the purpose of administering this Agreement, the Chief Engineer has designated Casimir Bognacki, General Manager, Materials Engineering Division to act as his duly authorized representative. The Project Manager for this project is Thomas Spero, tel. (201) 216-2970.

*Two Gateway Center  
Newark, New Jersey 07102*



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

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

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

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

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

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

The Chief Engineer has set a goal of 12 percent participation by qualified and certified MBEs and 5 percent to qualified and certified WBEs on technical service projects.

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

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

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

### 3. NOTIFICATION OF SECURITY REQUIREMENTS

The Port Authority of New York & New Jersey has facilities, systems, and projects where terrorism or other criminal acts may have a significant impact on life safety and key infrastructures. The Authority reserves the right to impose multiple layers of security requirements on the Contractor, its staff and subcontractors and their staffs depending upon the



level of security required, as determined by the Authority. These security requirements may include but are not limited to the following:

- Contractor/subcontractor identity checks and background screening, including but not limited to: inspection of not less than two forms of valid/current government issued identification (at least one having an official photograph) to verify staff's name and residence; screening federal, state, and/or local criminal justice agency information databases and files; screening of any terrorist identification files; multi-year check of personal, employment and/or credit history; access identification to include some form of biometric security methodology such as fingerprint, facial or iris scanning, or the like;
  - Issuance of Photo Identification cards;
  - Access control, inspection, and monitoring by security guards.
- The Contractor may be required to have its staff, and any subcontractor's staff, authorize the Authority or its designee to perform background checks. Such authorization shall be in a form acceptable to the Authority. The Contractor may also be required to use an organization designated by the Authority to perform the background checks. The cost for said background checks shall be reimbursable to the Contractor in the amount actually paid by the Contractor for the performance of background checks.

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

4. The proposer's attention is directed specifically to clause 19. below and to the fact that the Authority may require a certification in writing from the successful bidder that he has paid and caused his subcontractors to pay at least the prevailing rate of wage and supplements required by such clause prior to his receipt of any payment from the Authority hereunder as provided in clauses 8. and 20. below.

5. The Contractor agrees to make borings, take samples, install instrumentation and groundwater monitor wells, and perform any related, similar or incidental work on connection with any activity of the Authority at or in the vicinity of Newark International Airport, Port Newark, Elizabeth-Port Authority Marine Terminal, Teterboro Airport, John F. Kennedy International Airport, LaGuardia Airport, Brooklyn-Port Authority Marine Terminal, Erie Basin Marine Terminal, Lincoln Tunnel, Hoboken Port Authority Piers, Holland Tunnel, Bayonne Bridge, Goethals Bridge, Outerbridge Crossing, George Washington Bridge, Port Authority Bus Terminal, Port Authority West 30th Street Heliport, PATH Facilities, facilities of other Authority subsidiaries and authorized sites described in clause 6. below, at any time up to and including December 31, 2006, the amount of such work to be ordered being within the discretion of the Engineer.

6. As used herein "construction site" shall be deemed to refer to the Authority facilities listed in clause 5. above and any locations within the Port District. The Port District is defined as that geographical area within a 25-mile radius of the Statue of Liberty.



7. The Contractor's sole compensation shall be as set forth in Schedule A, which is attached hereto and made a part hereof, except as noted elsewhere herein.

8. On or about the fifth day of each month, the Engineer shall (upon receipt from the Contractor of such information as he may require, including certified payrolls) estimate and certify to the Authority the approximate amount of work performed and compensation earned by the Contractor up to that time. Within thirty days after receipt of such certification, the Authority will pay the Contractor by check the amount certified.

9. Work under this Contract shall be performed upon Notification, with confirmation by the Engineer in a Work Order. The Contractor shall do all things which the Engineer deems necessary or convenient for the Work, in such manner and sequence as the Engineer deems best, taking all precautions against injuries to persons, property or traffic, replacing at his own expense all Work unsatisfactory to the Engineer; all in strict accordance with all documents made part of the Work Order, including but not limited to, the Specifications and sketches or other drawings.

The Contractor shall provide at his home office, communication facilities and arrange employee assignments or provide office services so that he can receive and provide appropriate response to Notifications from the Engineer, twenty-four (24) hours a day, seven days a week, including Saturdays, Sundays and Holidays.

The parties hereto expressly agree that the Authority cannot anticipate the number or type of Work Orders that may be issued by the Engineer under this Agreement.

It is anticipated, but not guaranteed, that the Engineer will issue Work Orders, which will require Work to be performed concurrently at multiple locations at the construction site.

Unless specifically directed otherwise in the Notification from the Engineer, the Contractor shall be available at the construction site with sufficient and appropriate labor, equipment and material to expeditiously perform the Work, in the sole judgment of the Engineer, within the time stipulated in each Work Order.

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



## 11. AGENCY FOR RENTAL OF CONSTRUCTION EQUIPMENT

With respect to the performance of Work in the State of New York:

### General Provisions

The Contractor further agrees to act as the agent of the Authority, subject to the provisions of this numbered clause relating to such agency for the rental of all construction equipment necessary or desirable for or incidental to the performance of the Agreement (other than construction equipment owned and also used by the Contractor or owned and also used by any subcontractor) and, in the exercise of such agency, to assume all the obligations and duties imposed upon him by this Agreement. The Contractor may authorize any subcontractor to act as his subagent for rental of such equipment for use by such subcontractor, subject to all the provisions of this Agreement. "Construction equipment" as used in this numbered clause shall include plant.

The Authority will pay the rental charges for said equipment directly to the lessors thereof, but the charges so paid shall be deducted from the compensation payable to the Contractor under the Agreement; provided, however, that the Authority will pay such charges, and the Contractor is authorized by the Authority to act as such agent, to the extent only that the charges payable for such rental do not exceed the compensation payable to the Contractor under the Agreement; and provided further that the Contractor performs all the obligations relating to said agency imposed upon him by this Agreement.

The Authority will provide the Contractor with a statement to be furnished by him and the subcontractors to such lessors which will identify this Agreement as the one under which the Contractor is authorized to rent said equipment and which will identify the site to which delivery must be made. The Contractor shall arrange for delivery of said equipment directly to the construction site. Payment of the rental charges therefore shall be made by the Authority on the basis of invoices made out to the Authority in which is contained the place of delivery and on which the Contractor has certified by endorsement that such construction equipment is being or has been used in the performance of the Agreement, said invoices to be submitted through the Contractor to the Authority at the time said equipment is put into use at the construction site. In the event said invoices are not submitted promptly, at the time stated above, but are submitted at a time when, by reason of prior advances and payments to the Contractor or for his account, the amounts still payable to the Contractor in connection with the Contract are insufficient to pay said invoices, then the Authority shall not be liable to the lessors for any amounts in excess of said amounts still payable to the Contractor which remain in the possession of the Authority.

Notwithstanding the above agency arrangement, the Authority shall not be liable to lessors of construction equipment for any amounts except rental charges based on time of use of such equipment, and the Contractor's agency is limited accordingly. All obligations incurred by the Contractor or subcontractors for any other expenses, including repairs and damages for breach of the rental agreement, shall be obligations incurred by the Contractor or subcontractors as principal not as agent of the Authority. Moreover, as between the Authority and the Contractor, the Contractor shall be responsible for all amounts due to lessors of construction equipment notwithstanding the above agency arrangement.



The Contractor shall indemnify the Authority against any claim of any kind whatsoever made against the Authority by a lessor of construction equipment and the Contractor assumes the risk of all claims against him by any lessor of construction equipment, including in both cases, claims in connection with a subcontractor.

The agency provided for under this numbered clause shall not relieve the Contractor of any of his duties and obligations elsewhere provided for under this Agreement.

12. With respect to the performance of Work in the State of New Jersey, the attention of the Contractor is directed to the following provision of the New Jersey State Sales and Use Tax Act:

Receipts from sales made to contractors or repairmen of materials, supplies or services for exclusive use in erecting structures or building on, or otherwise improving, altering or repairing real property of:

(a) organizations described in subsections (a) and (b) of section 9 of the "Sales and Use Tax Act," P.L. 1966, c.30 (C. 54:32B-9);

\*\*\* are exempt from the tax imposed under the "Sales and Use Tax Act," provided any person seeking to qualify for the exemption shall do so pursuant to such rules and regulations and upon forms as shall be prescribed by the director. N.J.S.A. 54:32B-8:22.

The Authority is an exempt organization of the type described in subsection (a) of section 9 of the act.

In view of the foregoing, the Contractor should not include in his price(s) any amounts for New Jersey State sales and use taxes on such materials, supplies and services.<sup>1</sup>

If (i) any claim is made against the Contractor by the State of New Jersey for such sales or compensating use taxes, or (ii) any claim is made against the Contractor by a materialman or a subcontractor on account of a claim against such materialman or subcontractor by the State of New Jersey for such sales or compensating use taxes, then the Authority will reimburse the Contractor in an amount equal to the amount of such tax required to be paid in accordance with the requirements of law, provided that:

A. the Contractor, or the Contractor and any such subcontractor, as the case may be, have complied with such rules and regulations as may have been promulgated relating to the claiming of the exemption from such taxes and have filed all the forms and certificates required by the applicable laws, rules and regulations in connection therewith; and

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<sup>1</sup> Note regarding equipment rentals: The attention of the Contractor is directed to the fact that the New Jersey State Sales Tax Bureau has ruled that the "rental of equipment is taxable whether or not the job is performed for an exempt organization." Therefore in the case of equipment rentals, if any, the Contractor should include in his prices an amount for taxes thereon.



B. the Authority is afforded the opportunity before any payment of tax is made, to contest said claim in the manner and to the extent that the Authority may choose and to settle or satisfy said claim, and such attorney as the Authority may designate is authorized to act for the purpose of contesting, settling and satisfying said claim; and

C. the Contractor, or the Contractor and any such subcontractor, as the case may be, give immediate notice to the Authority of any such claim, cooperate with the Authority and its designated attorney in contesting said claim and furnish promptly to the Authority and said attorney all information and documents necessary or convenient for contesting said claim, said information and documents to be preserved for six years after the date of Final Payment or longer if such a claim is pending or threatened at the end of such six years.

If the Authority elects to contest any such claim, it will bear the expense of such contest.

13. With respect to the performance of Work in the State of New York:

A. Materials Incorporated in Permanent Construction

The attention of the Contractor is directed to the following provision of the New York State and New York City Sales and Compensating Use Tax Act:

"#1115. Exemptions from sales and use taxes. (a) Receipts from the following shall be exempt from the tax on retail sales imposed under subdivision (a) of section eleven hundred five and the compensating use tax imposed under section eleven hundred ten:

(15) Tangible personal property sold to a contractor, subcontractor or repairman for use in erecting a structure or building of an organization described in subdivision (a) of section eleven hundred sixteen, or adding to, altering or improving real property, property or land of such an organization, as the terms real property, property or land are defined in the real property tax law; provided, however, no exemption shall exist under this paragraph unless such tangible personal property is to become an integral component part of such structure, building or real property."

The Authority is an exempt organization of the type described in subdivision (a) of section eleven hundred sixteen.

In view of the foregoing, the Contractor should not include in his price(s) any amounts for New York State and New York City sales and compensating use taxes on such tangible personal property.

If (i) any claim is made against the Contractor by the State of New York or City of New York for such sales or compensating use taxes, or (ii) any claim is made against the Contractor by a materialman or a subcontractor on account of a claim against such materialman or subcontractor by the State of New York or City of New York for such sales or compensating use taxes, then the Authority will reimburse the Contractor in an amount equal to the amount of such tax required to be paid in accordance with the requirements of law, provided that:



- 1) the Contractor, or the Contractor and any such subcontractor, as the case may be, have complied with such rules and regulations as may have been promulgated relating to the claiming of the exemption from such taxes and have filed all the forms and certificates required by the applicable laws, rules and regulations in connection therewith;
- 2) and the Authority is afforded the opportunity before any payment of tax is made, to contest said claim in the manner and to the extent that the Authority may choose and to settle or satisfy said claim and such attorney as the Authority may designate is authorized to act for the purpose of contesting, settling and satisfying said claim; and
- 3) the Contractor, or the Contractor and any such subcontractor, as the case may be, give immediate notice to the Authority of any such claim, cooperate with the Authority and its designated attorney in contesting said claim and furnish promptly to the Authority and said attorney all information and documents necessary or convenient for contesting said claim, said information and documents to be preserved for six years after the date of Final Payment or longer if such a claim is pending or threatened at the end of such six years.

If the Authority elects to contest any such claim, it will bear the expense of such contest.

B. Rental of Construction Equipment

The rental by the Contractor or subcontractor of construction equipment not owned by the Contractor or subcontractors for use in the performance of the Contract will also not be subject to New York State or New York City sales or compensating use taxes, provided that:

- 1) the Contractor's and any subcontractor's use of construction equipment rented from others, and any agreement for such rental, is based upon the agency arrangement provided for in the clause hereof entitled "Agency for Rental of Construction Equipment" and the Contractor and subcontractors have performed all their obligations under said clause;
- 2) delivery of said equipment is to the construction site;
- 3) the Contractor or subcontractor has furnished to the lessor the statement from the Authority identifying this Contract as the one under which the Contractor or subcontractor has been authorized to rent said equipment and identifying the construction site to which delivery must be made;
- 4) the invoice for said equipment is made out to the Authority and prescribes the place of delivery; and
- 5) the amounts payable for rental of said equipment do not exceed the amount of compensation payable in connection with the Work.



In view of the above, the Contractor should not include in his price(s) any amounts for New York State and New York City sales and compensating use taxes on such rentals of equipment.

If (i) any claim is made against the Contractor by the State or City of New York for sales or compensating use taxes on such rental of construction equipment or (ii) any claim is made against the Contractor by a materialman, lessor or a subcontractor on account of a claim against such materialman, lessor or subcontractor by the State or City of New York for sales or compensating use taxes on rental of said equipment, then the Authority will reimburse the Contractor in an amount equal to the amount of such tax required to be paid in accordance with the requirements of law, provided that the provisos listed above in this numbered clause as A.1 through A.3 and B.1 through B.5 are complied with.

If the Authority elects to contest any such claim, it will bear the expense of such contest.

14. The Contractor shall commence any work ordered within 72 hours after receipt of such order, verbal or written, from the Engineer in the case of land and marsh borings, and within 96 hours after receipt of such order, verbal or written, from the Engineer in the case of water borings. Damages to the Authority for delay in mobilizing at a site shall be liquidated in the amount of One Hundred Dollars (\$100.00) per calendar day (Saturdays, Sundays and holidays included). All work shall be performed without interruption and completed expeditiously.

A. The term of Agreement shall commence on January 1, 2006 and shall terminate on December 31, 2006. However, if a Work Order is issued by the Engineer prior to December 31, 2006, and has a completion date beyond December 31, 2006, the Contractor shall perform such Work and the Agreement shall continue in full force and effect until the completion of such Work. In addition, the Authority shall have the option to extend the term of the Agreement as provided in the immediately following paragraph.

The Authority shall have the option to extend the term of this Agreement for up to two additional one-year periods upon the same terms and conditions, by giving written notice thereof to the Contractor at least thirty (30) days prior to the end of the original one-year period.

B. The Contractor's time to complete any portion of the work, delayed without fault on his part and by reason of causes beyond his control, such as dangerous weather conditions, and for which he is not responsible, shall be extended for such period as the Engineer deems equitable but not longer than a period equal to the time lost because of the delay. Such extensions shall be in lieu of and in liquidation of damages for delays for which the Authority is responsible. The Contractor shall give written notice to the Engineer of any delay within two (2) days from the beginning thereof, and his failure so to do shall constitute a waiver of any extension of time therefor. Time is of the essence of the Contractor's obligation hereunder.

15. During the performance of this Agreement within the State of New York, the Contractor agrees as follows:

A. The Contractor will not discriminate against any employee or applicant for employment because of race, creed, sex, color or national origin, and will take affirmative action to insure that they are afforded equal employment opportunities without discrimination because



of race, creed, sex, color or national origin. Such action shall be taken with reference, but not be limited, to: recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff or termination, rates of pay or other forms of compensation, and selection for training or retraining, including apprenticeship and on-the-job training.

B. The Contractor shall send to each labor union or representative of workers with which he has or is bound by a collective bargaining or other agreement or understanding, a notice, to be provided by the State Commission for Human Rights, advising such labor union or representative of the Contractor's agreement under clauses A through H (hereinafter called "non-discrimination clauses"). If the Contractor was directed to do so by the Authority as part of the bid or negotiation of this Agreement, the Contractor shall request such labor union or representative to furnish him with a written statement that such labor union or representative will not discriminate because of race, creed, sex, color or national origin and that such labor union or representative either will affirmatively cooperate, within the limits of its legal and contractual authority, in the implementation of the policy and provisions of these non-discrimination clauses or that it consents and agrees that recruitment, employment, and the terms and conditions of employment under this Agreement shall be in accordance with the purposes and provisions of these non-discrimination clauses. If such labor union or representative fails or refuses to comply with such a request that it furnish such a statement, the Contractor shall promptly notify the State Commission for Human Rights of such failure or refusal.

C. The Contractor shall post and keep posted in conspicuous places, available to employees and applicants for employment, notices to be provided by the State Commission for Human Rights setting forth the substance of the provisions of clauses A and B and such provisions of the State's laws against discrimination as the State Commission for Human Rights shall determine.

D. The Contractor shall state, in all solicitation or advertisements for employees placed by or on behalf of the Contractor, that all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, sex, color or national origin.

E. The Contractor shall comply with the provisions of Sections 291-299 of the Executive Law and the Civil Rights Law, shall furnish all information and reports deemed necessary by the State Commission for Human Rights under these non-discrimination clauses and such sections of the Executive Law, and shall permit access to his books, records and accounts by the State Commission for Human Rights, the Attorney General and the Industrial Commissioner for the purposes of investigation to ascertain compliance with these non-discrimination clauses and such sections of the Executive Law and Civil Rights Law.

F. This Agreement may be forthwith canceled, terminated or suspended, in whole or in part, by the Authority upon the basis of a finding made by the State Commission for Human Rights that the Contractor has not complied with these non-discrimination clauses, and the Contractor may be declared ineligible for future contracts made by or on behalf of the State, the Authority or other public authority or agency of the State, until he has satisfied the State Commission for Human Rights that he has established and is carrying out a program in



conformity with the provisions of these non-discrimination clauses. Such findings shall be made by the State Commission for Human Rights after conciliation efforts by the Commission have failed to achieve compliance with these non-discrimination clauses and after a verified complaint has been filed with the Commission, notice thereof has been given to the Contractor by the Commission and an opportunity has been afforded him to be heard publicly before the State Commission of Human Rights or his designee. Such sanctions may be imposed and remedies invoked independently of or in addition to sanctions and remedies otherwise provided by law.

G. The Contractor shall include the provisions of clauses A through F in every subcontract or purchase order in such a manner that such provisions will be binding upon each subcontractor or vendor as to operations to be performed within the State of New York. The Contractor shall take such action in enforcing such provisions of such subcontract or purchase order as the Authority may direct, including sanctions or remedies for non-compliance. If the Contractor becomes involved in or is threatened with litigation with a subcontractor or vendor as a result of such direction by the Authority, the Contractor shall promptly so notify the General Counsel of the Authority, requesting him to intervene and protect the interests of the Authority.

H. The provisions of this numbered clause which refer to the State Commission for Human Rights, the Attorney General and the Industrial Commissioner are inserted in this Agreement for the benefit of such parties, as well as for the benefit of the Authority, and said Commission, Commissioner and the Attorney General shall have a direct right of action against the Contractor to effectuate the intent of this clause.

16. With respect to the performance of the work within the State of New Jersey and in order to conform with the policy of the Authority the Contractor agrees that the provisions of N.J.S.A. 10:2-1 through 10:2-4, dealing with discrimination in employment on public contracts, and the Rules and Regulations promulgated pursuant thereto, are hereby made a part of this Contract and are binding upon him and that it shall not be a defense to the Contractor in any action arising directly or indirectly out of such legislation and Rules and Regulations that the Authority may not be subject thereto.

The provisions of this numbered clause are for the benefit of the Attorney General of the State of New Jersey, Division on Civil Rights in the Department of Law and Public Safety of the State of New Jersey, and the Director thereof, as well as for the benefit of the Authority, and said Division and Director shall have a direct right of action against the Contractor to effectuate the intent of this clause.

17. During the performance of this Agreement within the State of New Jersey, the Contractor agrees as follows:

A. The Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, religion, national origin, ancestry, age, sex or liability for military service. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, creed, color, religion, national origin, ancestry, age, liability for military service, or sex. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer;



recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and the selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause.

B. The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, creed, color, religion, national origin, ancestry, sex or liability for military service.

C. The Contractor will send to each labor union or representative of workers with which the Contractor has a collective bargaining agreement or other contract or understanding a notice advising the said labor union or workers' representative of the Contractor's commitments under this section and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

D. The Contractor will submit to the Authority every two weeks a report indicating the number of men employed at the construction site as of the 1st and 15th days of each month and the projected number of men to be so employed during the following month. This report shall also indicate the trade in which such men are employed and, with respect to current employment (but not projected employment), shall indicate the number of such men who are members of the following groups:

- 1.) Black
- 2.) Oriental
- 3.) American Indian
- 4.) Puerto Rican, Mexican-American or Cuban

With respect to the number of men in the four categories mentioned in the immediately preceding sentence, the report shall also list the name and address and the trade of each such men.

E. The Contractor will include the provision of paragraphs A through D of this Section in every contract, and will require the inclusion of these provisions in every sub-contract entered into by any of its subcontractors, so that such provisions will be binding upon each subcontractor, as the case may be. For the purpose of including such provisions in any construction contract or subcontract, as required hereby, the term "Contractor" and the term "Subcontractor" may be changed to reflect appropriately the name or designation of the parties of such contract or subcontract.

F. The Contractor agrees that he will fully cooperate with the office of the Attorney General of the State of New Jersey and with The Port Authority of New York and New Jersey which seeks to deal with the problem of unlawful or invidious discrimination, and with all other State efforts to guarantee fair employment practices under this Agreement, and said Contractor will comply promptly with all requests and directions from the Attorney General of the State of



New Jersey and The Port Authority of New York and New Jersey in this connection, both before and during construction.

G. Full cooperation as express in clause F foregoing shall include, but not be limited to, being a witness or complainant in any proceeding involving questions of unlawful or invidious discrimination if such is deemed necessary by the Attorney General of the State of New Jersey, permitting employees of said Contractor to be witnesses or complainants in any proceeding involving questions of unlawful or invidious discrimination, if such is deemed necessary by the Attorney General of the State of New Jersey, signing any and all documents involved in any proceeding involving questions of unlawful or invidious discrimination, the execution of which are deemed necessary by the Attorney General of the State of New Jersey, participating in meetings, submitting periodic reports on the racial aspects of present and future employment, assisting in inspection at the construction site, and promptly complying with all State directives deemed essential by the Attorney General of the State of New Jersey to insure compliance with all Federal and State laws, regulations and policies against racial or other unlawful or invidious discrimination.

H. Upon the basis of a finding by the Attorney General of the State of New Jersey that the Contractor has not complied with these non-discrimination clauses and that by reason thereof there has been a material breach of this Agreement, the Executive Director of The Port Authority of New York and New Jersey shall have the sole discretion and power to declare this Contract null and void upon 10 days notice to the Contractor. In such event the Contractor shall become liable for any and all damages which shall accrue to The Port Authority of New York and New Jersey including, but not limited to, the difference between the total cost of completion and the Contract price under this Agreement.

I. The provisions of this numbered clause which refer to the Attorney General are inserted in this Agreement for the benefit of the Attorney General of the State of New Jersey as well as for the benefit of the Authority, and said Attorney General shall have a direct right of action against the Contractor to effectuate the intent of this clause.

18. For work at any of the airport facilities, the Contractor assures that it will undertake an affirmative action program as required by 14 CFR Part 152, Subpart E, to insure that no person shall on the grounds of race, creed, color, national origin, or sex be excluded from participating in any employment activities covered in 14 CFR Part 152, Subpart E. The Contractor assures that no person shall be excluded on these grounds from participating in or receiving the services or benefits of any program or activity covered by this Subpart. The Contractor assures that it will require that its covered suborganizations provide assurances to the Contractor that they similarly will undertake affirmative action programs and that they will require assurances from their suborganizations, as required by 14 CFR Part 152, Subpart E, to the same effect.

19. The Contractor shall pay or provide (and shall cause all subcontractors to pay or provide) to his or their workmen, laborers and mechanics at the construction site at least the prevailing rate of wage and supplements, for others engaged in the same trade or occupation in the locality in which the work is being performed as determined by the Engineer. For this Agreement the Engineer has determined that the prevailing rates of wages and supplements are those established



by the Secretary of Labor of the United States pursuant to the Davis-Bacon Act (40 U.S.C.A. 276a) for the locality in which the Work is to be performed. The applicable rates shall be those which are in effect on the date of opening of Proposals. If the Contractor or any subcontractor shall fail to pay or provide at least such wages and supplements, such workmen, laborer or mechanic shall have a direct right of action against the Contractor or such subcontractor, without joining the Authority, for the difference between the wages and supplements actually paid or provided and those to which he is entitled under this clause, or if employed by any subcontractor whose subcontract does not contain a provision substantially similar to the provisions of this clause, such workman, laborer and mechanic shall have a direct right of action against the Contractor.

Nothing herein contained shall be construed to constitute a representation or guarantee that the Contractor or any subcontractor can obtain workmen, laborers and mechanics for the minimum hereinbefore prescribed.

20. Upon the satisfactory completion of all work whatsoever required, the Engineer shall render to the Authority and to the Contractor a certificate in writing certifying to such completion. After the rendition of such certificate of final completion, the receipt from the Contractor of such information as the Engineer may require (including without limitation a detailed, sworn statement of all claims and demands, just or unjust, of materialmen, subcontractors, laborers and third persons then outstanding and/or which he has reason to believe may thereafter be made, and satisfactory evidence that the work is fully released from such claims and demands and certified payroll records), and the determination of the amount of compensation earned, the Engineer shall render to the Authority and to the Contractor a certificate in writing certifying the entire amount of compensation earned. Within thirty days after rendition of such certificate of entire amount of compensation earned, the Authority shall pay to the Contractor by check the amount so certified by the Engineer, minus all prior payments and advances to or for the account of the Contractor, if any. The Contractor's acceptance of such payment shall operate as a release to the Authority for all things done or furnished by the Contractor and for every act and neglect of the Authority.

21. No certificate, payment (final or otherwise), acceptance of any work nor any other act or omission of the Authority or the Chief Engineer shall operate to release you from any obligations under or upon this Agreement, or to estop the Authority from showing at any time that such certificate, payment, acceptance, act or omission was incorrect or to preclude the Authority from recovering any money paid in excess of that lawfully due, whether under mistake of law or fact or to prevent the recovery of any damages sustained by the Authority.

22. Any assignment or other transfer of this Agreement or any monies due or to become due hereunder without the written consent of the Authority shall be void and of no effect as to the Authority, except that work may be sublet to such persons as the Engineer expressly approved in writing and subject to obtaining by the Authority of a waiver from the subcontractor of any rights it may have against the Authority to limitation or apportionment of damages under the law of admiralty or to limitation of liability under 33 U.S.C.A. Chapter 9, 46 U.S.C.A. Chapter 8, or any



other similar statutes. No subcontractor shall create any rights against the Authority or relieve the Contractor of any obligations, but all subcontractors shall be deemed the Contractor's agents.

23. To induce the acceptance of this Proposal, the undersigned hereby makes each and every certification, statement, assurance, representation and warranty made by the Contractor in this Contract. The Contractor warrants and represents that he is financially solvent and experienced in and competent to perform the type of work required hereunder; if a corporation, that it is authorized to do such work in the state or states where it is to be performed; that he is familiar with all applicable laws, ordinances and regulations; with the Specifications and Contract Drawings and all papers referred to herein, with the site of the work, the nature of the work and the general and local conditions, and with all other pertinent circumstances; that physical conditions and other circumstances permit the performance of the work in accordance with this Agreement and accordingly he agrees that all work required because of unforeseen conditions or circumstances shall be at his expense; that no Commissioner, officer, agent or employee of the Authority is personally interested directly or indirectly in this Proposal; and that no representation, promise or statement, oral or in writing, has induced him to submit this Proposal, saving only those contained in this Agreement. 15. In order to effectuate the policy of the Authority, the services provided by the Contractor shall comply with all provisions of Federal, State, municipal, local and departmental laws, ordinances, rules, regulations, and orders which would affect or control said services if the services were being performed for a private corporation, unless the Authority standard is more stringent, in which case the Authority standard shall be followed, or unless the Contractor shall receive a written notification to the contrary signed by the Chief Engineer personally, in which case the requirements of said notification shall apply.

24. The Contractor assumes the following distinct and several risks, whether they arise from the acts or omissions (whether negligent or not) of the Contractor or its subcontractors, of the Authority or of third persons or from any other cause, and whether such risks are within or beyond the control of the Contractor excepting only risks which arise solely from affirmative acts done by the Authority subsequent to the execution of this Agreement with actual and willful intent to cause the loss, damage and injuries described in subparagraphs A through D below:

A. The risk of loss or damage to Authority property or to soils instrumentation devices, both before and after installation thereof, occurring prior to the issuance of the Certificate of Final Completion, arising out of or alleged to arise out of or in connection with the performance of services hereunder;

B. The risk of loss or damage occurring at the construction site to any property of the Contractor arising out of or alleged to arise out of or in connection with the performance of services hereunder;

C. The risk of claims, arising out of or alleged to arise out of or in connection with the performance of services hereunder, whether made against the Contractor or the Authority, for loss or damage occurring at the construction site to any property of the Contractor's agents, employees, subcontractors, subconsultants, materialmen and others performing services hereunder;



D. The risk of claims, just or unjust, by third persons made against the Contractor or the Authority on account of injuries (including wrongful death), loss or damage of any kind whatsoever arising or alleged to arise out of or in connection with the performance of services hereunder (whether or not actually caused by or resulting from the performance of the services hereunder) including claims against the Contractor or the Authority for the payment of workers' compensation, whether such claims are made and whether such injuries, damage and loss are sustained at any time both before and after the completion of services hereunder.

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

The provisions of this clause shall also be for the benefit of the Commissioners, officers, agents and employees of the Authority, so that they shall have all the rights which they would have under this clause if they were named at each place above at which the Authority is named, including a direct right of action against the Contractor to enforce the foregoing indemnity, except, however, that the Authority may at any time in its sole discretion and without liability on its part cancel the benefit conferred on any of them by this clause, whether or not the occasion for invoking such benefit has already arisen at the time of such cancellation.

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

This paragraph shall not limit the responsibilities the Contractor would have in the absence of this paragraph. No third party rights are created by the Agreement, except to the extent that the Agreement specifically provides otherwise by use of the words "benefit" or "direct right of action".

Inasmuch as the Authority has agreed to indemnify the Cities of Newark, NJ and New York, NY against claims of the types described in subparagraph D above made against said cities, the Contractor's obligation under subparagraph D above shall include claims by said cities against the Authority for such indemnification, including those arising from acts or omissions (whether negligent or not) of said cities.



25. COMMERCIAL LIABILITY INSURANCE AND WORKERS' COMPENSATION INSURANCE

A. Commercial Liability Insurance:

- 1) The Contractor shall take out and maintain at his own expense Commercial General Liability Insurance including but not limited to Premises-Operations, Completed Operations, Independent Contractor coverage and coverage for Explosion, Collapse and Underground Property Damage in limits of not less than \$10,000,000 combined single limit per occurrence for Bodily Injury Liability and Property Damage Liability. And if vehicles are to be used to carry out the performance of this contract, then the Contractor shall also take out, maintain and pay the premiums on Automobile Liability Insurance covering all owned, non-owned and hired autos in not less than \$5,000,000 combined single limit per accident for bodily injury and property damage. In addition, the policy (ies) shall include the Port Authority of NY & NJ and Port Authority Trans-Hudson Corp. (PATH), City of New York and City of Newark as additional insured and shall contain a provision that the policy may not be canceled, terminated or modified without thirty (30) days written advance notice to the Project Manager as noted below. Moreover, the Commercial General Liability policy shall not contain any provisions (other than a Professional Liability exclusion, if any) for exclusions from liability other than provisions or exclusions from liability forming part of the most up to date ISO form or its equivalent, unendorsed Commercial General Liability Policy. The liability policy (ies) and certificate of insurance shall contain cross-liability language providing severability of interests so that coverage will respond as if separate policies were in force for each insured. Furthermore, the Contractor's insurance shall be primary insurance as respects to the above additional insured (s), its representatives, officials, and employees. Any insurance or self insurance maintained by the above additional insured (s) shall not contribute to any loss or claim. These insurance requirements shall be in effect for the duration of the contract to include any warrantee/guarantee period.

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



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

B. Workers' Compensation Insurance:

- 1) The Contractor shall take out and maintain Workers' Compensation Insurance in accordance with the requirements of law and Employer's Liability Insurance with limits of not less than \$1,000,000 each accident
- 2) Additional Coverages: The Contractor shall have the policy endorsed when required by the Engineer for specific services hereunder and include the additional premium cost thereof as an out-of-pocket expense:
  - a) United States Longshoremen's and Harbor Workers' Compensation Act Endorsement.
  - b) Coverage B Endorsement - Maritime (Masters or Members of the Crew of Vessels), in limits of not less than \$1,000,000 per occurrence.
  - c) Amendments to Coverage B, Federal Employers' Liability Act in limits of not less than \$1,000,000 per occurrence.

C. Compliance:

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

- 1) Renewal certificates of insurance or policies shall be delivered to the Facility Contractor Administrator, Authority at least fifteen (15) days prior to the expiration date of each expiring policy. The General Manager, Risk Management must approve the renewal certificate(s) of insurance before work can resume on the facility. If at any time any of the certificates or policies shall become unsatisfactory to the Authority, the Contractor shall promptly obtain a new and satisfactory certificate and policy.
- 2) If at any time the above liability insurance should be canceled, terminated, or modified so that the insurance is not in effect as above required, then, if the Manager shall so direct, the Contractor shall suspend performance of the contract at the premises. If the contract is so suspended, no extension of time shall be due on account thereof. If the contract is not suspended (whether or not because of omission of the Manager to order suspension), then the Authority may, at its option, obtain insurance affording coverage



equal to the above required, the cost of such insurance to be payable by the Contractor to the Authority.

- 3) Upon request of the Manager, Risk Management/Treasury, the Contractor shall furnish to the Authority a certified copy of each policy itself, including the provisions establishing premiums.
- 4) The requirements for insurance procured by the Contractor shall not in any way be construed as a limitation on the nature or extent of the contractual obligations assumed by the Contractor under this contract. The insurance requirements are not a representation by the Authority and the other additional insureds as to the adequacy of the insurance to protect the Contractor against the obligations imposed on them by law or by this or any other Contract.

26. The Engineer shall have authority to increase, decrease and modify the work and may suspend performance of any work for any period during which he deems it undesirable to proceed therewith for any reason, whether or not either of the parties is responsible for such reason; and the Engineer may cancel this Agreement as to any work not yet performed if he deems it undesirable to proceed therewith for any reason, whether or not either of the parties is responsible for such reason; and the Engineer may cancel this Agreement as to any work not yet performed if he deems it undesirable to proceed therewith for any reason for which the Authority is not responsible, without prejudice to rights and obligations arising out of work already performed. The Engineer shall have authority to interpret the Specifications and to decide all questions in connection with the work. The exercise by the Engineer of his powers and authorities, whether vested by this Paragraph or elsewhere in the Agreement, shall be final and binding upon the Authority and the Contractor. The Authority reserves the right to award any of the work defined by this Agreement to other contractors if the Contractor does not perform in accordance with the Specifications and schedule requirements and is so notified in writing by the Engineer.

27. The Authority may at any time for cause terminate this Agreement as to any services not yet rendered, and may terminate this Agreement in whole or in part without cause upon three (3) days notice to you. You shall have no right of termination as to any services under this Agreement without just cause. Termination by either party shall be by certified letter addressed to the other at its address hereinbefore set forth. Should this Agreement be terminated in whole or in part by either party as above provided, you shall receive no compensation for any services not yet performed, but if termination is without fault on your part, the Authority shall pay you as the full compensation to which you shall be entitled in connection with this Agreement the amounts computed as above set forth for services completed to the satisfaction of the Chief Engineer through the date of termination, minus all prior payments to you.

28. If the Contractor is guilty of any breach hereof or is materially delayed by a cause which would not prevent the Authority from completing the work itself or through others, or fails to satisfy any liability to any third persons arising out of the work, or becomes insolvent or bankrupt, or if his property or affairs are placed in the hands of a receiver or trustee, or if any



claim arising out of the Contractor's operations is made against the Authority, the Authority shall be entitled (a) to withhold out of money otherwise due such sums as the Engineer deems necessary to protect it from loss or delay or to assure the payment of just claims and to apply said sums for the Contractor's account as the Engineer deems best; (b) to take over and complete the work or any part thereof for the Contractor's account, taking possession of and using any facilities provided by him; (c) to cancel this Agreement as to all or any part of the uncompleted work; and (d) to exercise any appropriate right or remedy at law or in equity. No exercise by the Authority of any right under this Agreement shall operate as a waiver of any other rights not inconsistent therewith; and the enumeration of specific rights of the Authority under this Contract shall not be construed to deny the existence of or to impair any other rights which the Authority might have. No waiver by the Authority of any breach shall constitute a waiver of any other breach.

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

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

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

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

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

- A. been indicted or convicted in any jurisdiction;



B. been suspended, debarred, found not responsible or otherwise disqualified from entering into any agreement with any governmental agency or been denied a government agreement for failure to meet standards related to the integrity of the Contractor;

C. had a agreement terminated by any governmental agency for breach of agreement or for any cause based in whole or in part on an indictment or conviction;

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

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

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

G. been, and is not currently, the subject of a criminal investigation by any federal, state or local prosecuting or investigative agency and/or a civil anti-trust investigation by any federal, state or local prosecuting or investigative agency.

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

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

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

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

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

D. this organization has not made any offers or agreements or taken any other action with respect to any Authority employee or former employee or immediate family member of either which would constitute a breach of ethical standards under the Code of Ethics dated April 11, 1996 (a copy of which is available upon request to the individual named in the clause hereof entitled "Contractor'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; and

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

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

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

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

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

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

In any case where the Contractor cannot make the foregoing certifications, the Contractor shall so state and shall furnish with the signed proposal a signed statement, which sets forth in detail the reasons therefor. If the Contractor is uncertain as to whether it can make the foregoing certifications, it shall so indicate in a signed statement furnished with its proposal, setting forth in such statement the reasons for its uncertainty.

Notwithstanding that the Contractor may be able to make the foregoing certifications at the time the proposal is submitted, the Contractor shall immediately notify the Authority in writing during the period of irrevocability of proposals on this Agreement or any extension of such period of any change of circumstances which might under this clause make it unable to make the foregoing certifications or require disclosure. The foregoing certifications or signed statement shall be deemed to have been made by the Contractor with full knowledge that they would become a part of the records of the Authority and that the Authority will rely on their truth and accuracy in awarding this Agreement. In the event that the Authority should determine at any time prior or subsequent to the award of this Agreement that the Contractor 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 Contractor is not a responsible Contractor with respect to its proposal on the Agreement or with respect to future proposals on Authority agreements and may exercise such other remedies as are provided to it by the Agreement with respect to these matters. In addition, Contractors 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.). Contractors are also advised that the inability to make such certification will not in and of itself disqualify a Contractor, and that in each instance the Authority will evaluate the reasons therefor provided by the Contractor.

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

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

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

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

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

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



As used herein "anything of value" shall include but not be limited to any (a) favors, such as meals, entertainment, transportation (other than that contemplated by the Agreement or any other Authority agreement), etc. which might tend to obligate the Authority employee to the 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 Agreement or any other Authority agreement. Where used herein, the term "Port Authority" or "Authority" shall be deemed to include all subsidiaries of the Authority.

The 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 agreement, 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 subagreement entered into under this Agreement.

### 36. CONFLICT OF INTEREST

During the term of this agreement, the Contractor shall not participate in any way in the preparation, negotiation or award of any agreement (other than a agreement for its own services to the Authority) to which it is contemplated the Authority may become a party, or participate in any way in the review or resolution of a claim in connection with such a agreement if the Contractor has a substantial financial interest in the Contractor or potential Contractor of the 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 agreement with such a Contractor or the review or resolution of a claim in connection with such a agreement 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 Chief Engineer in writing of such situation giving the full details thereof. Unless the Contractor receives the specific written approval of the Chief Engineer, 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 Chief Engineer 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 Chief Engineer to be no longer appropriate because of such preclusion, then the Chief Engineer shall have full authority on behalf on 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 agreements which result, directly or indirectly, from the services provided by the Contractor hereunder.

### 37. DEFINITIONS

As used in clauses 32 to 36 above, the following terms shall mean:

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

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

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

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

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

38. The entire Agreement between the parties is contained herein and no change in or modification, termination or discharge of this Agreement in any form whatsoever shall be valid or enforceable unless it is in writing and signed by the party to be charged therewith, or his duly authorized representative, provided, however, that termination in the manner hereinbefore expressly provided shall be effective as so provided.



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

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

\_\_\_\_\_  
Warren George, Inc.

By\*: Frank Hanyang  
Title: President

Contractor's Address:  
P.O. Box 413  
Jersey City, NJ 07303  
(Corporate Seal)

Telephone Number: 201-433-9797

ACCEPTED: 6/28/06

THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY

By: Francis J. Lombardi  
Francis J. Lombardi, P.E.  
Chief Engineer

(\*) NOTE: The foregoing signature shall be deemed to have been provided with full knowledge that the foregoing Proposal, the accompanying Contract booklet, as well as any certification, statement, assurance, representation, warranty, schedule or other document submitted by the bidder with the Proposal will become a part of the records of the Authority and that the Authority will rely in awarding the Contract on the truth and accuracy of such Proposal and each such certification, statement, assurance, representation, warranty and schedule made therein by the Contractor. Knowingly submitting a false statement in connection with any of the foregoing may be the basis for prosecution for offering a false instrument for filing (see, e.g., N.Y. Penal law, Section 175.30 et seq.).