

Request for Proposals for CONTROLLED INSPECTIONS PIER A CORE AND SHELL PHASE III

Designated Contact for Administrative Issues:

Venus Callender
Telephone 212.417.4335

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BPCA Permissive Contacts Policy:

Pursuant to State Finance Law, §139-j and 139-k, this, RFP includes and imposes certain restrictions on communications between Battery Park City Authority and its subsidiaries and affiliates and an Offerer (Contractor/Commissioning Authority or their representative) during the procurement process. An Offerer/bidder (or its representative) is restricted from making contacts from the earliest notice of intent to solicit offers [i.e. from Contract Reporter ad publication] through final award and approval of the Procurement Contract by BPCA ("Restricted Period") to other than **designated staff** unless it is a contact that is included among certain statutory exceptions set forth in State Finance Law § 139-j (3) (a). The designated staff contact person is identified in this solicitation. BPCA employees are also required to obtain and record certain information when contacted during the restricted period, and make a determination of the responsibility of the Offerer/bidder pursuant to these two statutes. Certain findings of non-responsibility can result in rejection for contract award, and in the event of two findings within a 4 year period, the Offerer/bidder will be debarred from obtaining governmental Procurement Contracts.

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I. INTRODUCTION

The Battery Park City Authority (the "Authority") is hereby requesting proposals for the project described on the cover sheet of this document (the "Project").

Proposers ("Proposers") are invited to submit proposals ("Proposal") for the work ("Work") described in Appendix V in accordance with the terms and conditions of this request for proposals ("RFP"). A site inspection by each Proposer is recommended prior to submission of a Proposal. Proposers should contact the Authority's Contract Administrator identified below to schedule a site inspection. Background information if applicable and a general description of the Project are also included in Appendix V.

The Authority reserves the right, in its sole discretion, to reject at any time any or all Proposals, to withdraw this Request without notice and to negotiate with one or more Proposers submitting Proposals on terms other than those set forth herein. The Authority reserves the right to waive compliance with and/or change any of the terms and conditions of this Request. Under no circumstances will the Authority pay any costs incurred by a Proposer in responding to this Request. All questions regarding the Request should be directed to Ms. Venus Callender, the Authority's Contract Administrator, at (212) 417-4335.

II. AFFIRMATIVE ACTION PROGRAM

1. Compliance and Enforcement

With respect to the requirements of Section 317 of Article 15-A of the Executive Law of the State of New York and the regulations adopted in furtherance of such law, the selected proposer (sometimes referred to as the "Proposer") agrees to comply with the provisions of this Request and the Agreement attached hereto.

2. Opportunities for Minority and Women-Owned Business Enterprises (MBE'S/WBE'S)

- 2.1 Proposer will be required to make every good faith effort to achieve the participation goals described in Appendix V for utilization of MBEs and WBEs.
- 2.2 A directory of MBEs and WBEs is available for inspection at the office of the Authority's Affirmative Action officer. Information concerning certified businesses, certification, or other equal opportunity or affirmative action matters may be obtained by contacting BPCA at 212-417-2337.
- 2.3 Within 14 days after notification that it has submitted the successful Proposal, Proposer shall return to the Authority a plan which shall include its intended participation percentages for MBEs and WBEs for the Project using the form "Exhibit Part 3: MBE/WBE Required Participation Plan" attached in Appendix IV. This form must be submitted with the proposed participation percentages along with the Proposal.
- 2.4 The MBE/WBE Required Participation Plan shall, among other items, include the names of certified MBEs/WBEs Proposer intends to use, and a description of any portion of the Work that is intended to be structured so as to increase

participation of MBEs/WBEs, including the estimated dollar amounts to be paid to and the estimated performance date for each MBE and WBE.

- 2.5 Within 20 days after submission of its MBE/WBE Required Participation Plan, but in no event later than the date on which the Agreement is executed with Proposer, the Authority will review the MBE/WBE Required Participation Plan and will issue and forward to Proposer a written notice of acceptance, deficiency or rejection of such plan. In no event shall the Authority enter into the Agreement without first reviewing Proposer's MBE/WBE Required Participation Plan and determining that it is finding it satisfactory to the Authority.
- 2.6 In the event a notice of deficiency has been issued, Proposer shall submit a written response describing its intended remedy for noted deficiencies within 7 days after receipt of such notice of deficiency.
- 2.7 In the further event that the Authority finds that the written remedy response is either untimely or is inadequate, Proposer may request a partial or full waiver of the participation goal requirements, by filing a waiver form within five days after receipt of the Authority's above referenced notice of deficiency. Failure to file a waiver form in a timely manner may be grounds for disqualification of the Proposal.
- 2.8 Disqualification of the Proposer from entering into the Agreement may result from the failure by Proposer to (i) submit a MBE/WBE Required Participation Plan, (ii) remedy noted deficiencies in the MBE/WBE Required Participation Plan, and (iii) document good faith efforts to meet participation goals.
- 2.9 Proposer must submit with its Proposal, a utilization plan (using the form named "Exhibit Part 4 Utilization Plan" attached in Appendix IV) setting forth a participation goal as described in Appendix V for utilization of employees who are Minority Group Members (as defined in the Agreement) and who are women, which the Proposer will use to perform the Work described in Appendix V. Failure to timely submit the Utilization Plan will be grounds for the disqualification of the Proposal.
- 2.10 Proposer further agrees that once it has submitted its MBE/WBE required Participation Plan and the Utilization Plan to the Authority, it will not alter, change or amend either plan for the duration of the agreement without the prior written consent of the Authority.
- 2.11 Proposer will be required to ensure that Minority Group Members and Women are afforded equal employment opportunities without discrimination in all segments of the workforce for the Work.

III. NEW YORK STATE OMNIBUS PROCUREMENT ACT OF 1992

It is the policy of the Authority and the State of New York to encourage the use of the New York State subProposers and suppliers, and to promote the participation of minority and women-owned businesses, where possible in the procurement of goods and services.

Information on the availability of New York State subProposers and suppliers is available from the New York State Department of Economic Development, Division for Small Business, (518) 474 7756. A directory of minority and women-owned business enterprises is available from the New York State Department of Economic Development (518) 474-6346.

By signing a Proposal in the amount greater than \$1 million, each Proposer certifies that it:

- a. Has made all reasonable efforts to encourage the participation of New York State Business Enterprises as suppliers and subProposers on this project, and has retained the documents of these efforts to be provided upon request to the Authority;
- b. Has complied with the Federal Equal Opportunity Act of 1972 (P.L. 92-261), as amended;
- c. Agrees to make all reasonable efforts to provide notification to New York State residents of employment opportunities on this project through listing any such positions with the Job Service Division of the New York State Department of Labor, or providing such notification in such manner as is consistent with existing collective bargaining contracts or agreements and agrees to document these efforts and to provide said documentation to the Authority upon request and;
- d. Acknowledges notice that New York State may seek to obtain offset credits from foreign countries as a result of the contract for this project and agrees to cooperate with the State in these efforts.

IV. MACBRIDE FAIR EMPLOYMENT PRINCIPLES

By submitting a proposal, Proposer certifies that it and/or any individual or legal entity in which it holds a 10% or greater ownership interest, and any individual or legal entity that holds a 10% greater ownership in it, either:

have no business operations in Northern Ireland; or

shall take lawful steps in good faith to conduct any business operations they have in Northern Ireland in accordance with the MacBride Fair Employment Principles relating to nondiscrimination in employment and freedom of workplace opportunity regarding such operations in Northern Ireland, as set forth in Section 174-b of the New York State Finance Law, and shall permit independent monitoring of their compliance with such principles.

V. PROPOSAL SUBMISSION PROCESS

Proposers will be required to submit a Cost and/or Technical Proposal for the Work indicated in Appendix V: General Description and Scope of Work. The Authority will review the Proposal for completeness and compliance with terms and conditions thereof. The Authority reserves the right to request additional information or materials it may deem useful or appropriate to evaluate each Proposer's qualifications and past experience. Submission of a Proposal shall constitute the Proposer's permission to the Authority to make such inquiries concerning the Proposer as the Authority in its sole discretion deems useful or appropriate.

In the event that the Authority becomes aware of any material inaccuracy in the information supplied by a Proposer, the Authority shall have the right to refuse to continue review of the Proposal or to take any other action as shall be deemed appropriate by the Authority, in its sole discretion.

Public access to materials submitted by Proposer in response to this Request shall be governed by the relevant provisions of the Freedom of Information Law, Article 6 of the New York State Public Officers Law ("FOIL"), and regulations adopted pursuant thereto. If a Proposer submits information which it believes to be a trade secret or otherwise exempt from disclosure under FOIL, it must specifically identify such information and state in writing the reasons why the information should be exempt from disclosure.

The review of a Proposal submitted by a Proposer will create no legal or equitable rights in favor of the Proposer, including without limitation, rights of enforcement or reimbursement. Failure by the Authority for any reason to select a Proposer as a result of this Request will not create any liability on the part of the Authority or any of its members, officers, employees, agents, consultants or Proposers. Submission of a Proposal by a Proposer in response to this Request will constitute a waiver by such Proposer of any claim against any of the foregoing for any costs incurred or for any matters arising thereunder or in connection with the review of such Proposal by the Authority.

To be eligible for consideration, the Proposal must be submitted in writing on the form included in Appendix VIII and placed in a sealed envelope and delivered by an authorized officer of the firm. The name of the project being bid must appear clearly on the envelope. The Authority must receive proposals no later than the date specified in Appendix VI and addressed to:

Battery Park City Authority
One World Financial Center - 24th Floor
New York, NY 10281-1097

Attention: Ms. Venus Callender
Contract Administrator

Three (3) bound copies and one fully electronic copy on disk of the Proposal must be received on or before the submission date. The electronic copy must include all submittals to accompany the Proposal as noted in Appendix VII and be identical to the paper copy. Only Microsoft Word (doc), Microsoft Excel (xls) and Adobe Reader (pdf) formats will be accepted. The Proposal form must be a pdf file.

VI. SELECTION PROCESS

The Authority may make requests for additional materials or for clarification or modification of any submitted Proposal, but will not be obligated to request such additional materials or seek clarification or modification of a Proposal which is incomplete or non-conforming as submitted. Proposers will not be entitled to change their Proposals once submitted, without the consent of the Authority.

The Authority reserves the right to request and accept modifications or additions to Proposals, to reject any and all Proposals or to withdraw this Request at any time without

notice, This Request is not a request for bids or part of a competitive bid process and the Authority reserves the right to use the Proposal as a basis for negotiation and to negotiate with Proposers prior to or after Proposers selection.

The Authority will exclude from consideration those Proposers that in the sole judgment of the Authority fail to demonstrate the necessary qualifications to undertake the Project. From the remaining Proposals, the Authority, will select the Proposer which, in the sole judgment of the Authority, most successfully demonstrates the necessary experience to undertake the project, offers the most favorable financial terms, and best meets the other needs and goals of the Project and the Authority.

VII. EXECUTION OF THE AGREEMENT

The submission of a Proposal with respect to the Project shall constitute an agreement by the Proposer to execute the Agreement (the "Agreement"), in the form appended to this Request, within fifteen (15) business days after submission to it for execution, time being of the essence. In the event that the Proposer fails to execute the Agreement for any reason within such period, the Authority may terminate the selection of the Proposer and negotiate and execute the Agreement with another party.

The selection of a Proposer will create no legal or equitable rights in favor of the selected Proposer, including without limitation, rights of enforcement or reimbursement. Failure by the Authority for any reason to execute the Agreement with the selected Proposer will not create any liability on the part of the Authority or any of its members, officers, employees, agents, or consultants. Submission of a Proposal by a Proposer in response to this Request will constitute a waiver by such Proposer of any claim against any of the foregoing for any costs incurred or for any matters arising thereafter or in conjunction with the negotiation or execution of (or failure to execute) this Agreement.

Appendix I: Model Agreement

MODEL CONSULTANT AGREEMENT
[Updated February 2001]

CONSULTANT AGREEMENT

between

BATTERY PARK CITY AUTHORITY
d/b/a HUGH L. CAREY BATTERY PARK CITY AUTHORITY

and

[NAME OF CONSULTANT]

Dated as of _____

Contract No. _____

CONSULTANT AGREEMENT

AGREEMENT made as of _____ between BATTERY PARK CITY AUTHORITY, d/b/a Hugh L. Carey Battery Park City Authority, a body corporate and politic, constituting a public benefit corporation, having a place of business at One World Financial Center, New York, NY 10281 ("Owner") and _____, a _____ formed pursuant to the laws of the State of New York, having an office at _____ ("Consultant").

WITNESSETH:

WHEREAS, Owner has fee title to certain real property located in the City, County and State of New York, generally known as Battery Park City ("Battery Park City"); and

WHEREAS, Owner is in the process of creating the staged development of Battery Park City, in individual parcels, with the goal of creating a richly diversified mixed use community providing residential and commercial space with related amenities such as parks, plazas, recreational areas and a waterfront esplanade; and

WHEREAS, Owner intends to retain the services of Consultant to _____ and Consultant desires to perform such services for Owner;

NOW, THEREFORE, in consideration of the mutual promises herein contained, the parties hereby agree as follows:

1. Scope of Work

Consultant shall perform, directly or through the use of consultants, contractors or other third parties (collectively, "Subconsultants"), all the services described in the Scope of Work attached hereto as Exhibit A (the "Work") and in accordance with any schedule for the Work set forth therein. Owner hereby acknowledges that certain portions of the Work may have been performed by Consultant prior to the date hereof, in anticipation of this Agreement.

2. Time for Performance

The Work shall commence on the date hereof and terminate not later than _____ unless this Agreement is otherwise terminated as hereinafter provided or the time for performance of the Work is extended by Owner upon written notice.

3. Compensation

(a) Consultant shall be entitled to receive as compensation ("Fee") for the Work an amount equal to the lower of (1) \$ _____ or (2) the amount obtained by multiplying the relevant hourly rates set forth in Exhibit B hereto by the number of hours worked by Consultant. **[if applicable: The Fee includes reimbursement in accordance with Owner's standard policies for reasonable expenses actually incurred by Consultant in connection with the performance of the Work.]** Consultant shall submit written requests for payment on or about the first (1st) day of each calendar month for Work actually performed by it during the immediately preceding calendar month. Each request shall be accompanied by a statement of Work performed and, at Owner's discretion, time sheets attached as Exhibit E hereto or comparable documentation indicating hours worked in each category **[delete the preceeding underlined phrase if Compensation is based on a fixed Fee]**. Owner shall pay Consultant so much of the amount requested as may be approved by Owner not later than the 30th day following Owner's receipt of each written request. Any amounts indicated in any exhibit hereto as attributable to any phase of the Work which do not in fact become payable to Consultant with respect to such phase of the Work shall be available for payment to Consultant with respect to subsequent phases of the Work, subject to the provisions of this Article 3 and the approval of Owner.

(b) Consultant shall also be reimbursed in accordance with Owner's standard policies for reasonable expenses actually incurred ("Reimbursable Expenses") by Consultant in connection with the performance of the Work, such expenses not to exceed \$ _____. **[THIS SECTION SHOULD BE OMITTED IF REIMBURSABLE EXPENSES ARE INCLUDED IN THE FEE AS SET FORTH ABOVE.]**

(c) All requests for payment should be addressed as follows:

Battery Park City Authority
Office of the Treasurer
Attention: Accounts Payable
One World Financial Center, 24th Floor
New York, New York 10281-1097

A duplicate copy is to be sent to the attention of [name of project manager.]

4. Increase and Decrease in the Scope of Consultant's Work

Owner shall have the right to make changes or to increase or reduce the scope of the Work or to extend the period set forth in the time schedule in Section 2, at any time and for any reason, upon written notice to Consultant specifying the nature and extent of such changes. In the event any such changes as contemplated herein results in an additional expenditure of time by Consultant or Subconsultant, Owner will pay Consultant an additional fee computed in accordance with the hourly rates set forth in Exhibit B, or if no such rates are set forth, upon terms to be agreed upon. At Owner's discretion, each request for payment for such additional work shall be accompanied by time sheets (see Exhibit E, attached) or comparable documentation indicating hours worked in each category. [delete immediately preceding sentence if the original Compensation is a not-to-exceed amount.]

5. Consultant Cooperation

Consultant shall work with such firms or individuals as Owner shall designate from time to time in connection with the Work, and agrees to meet with such firms or individuals at such times as Owner may require in order to maintain an ongoing review process so as to expedite determinations and approvals required to be made in connection with the Work.

6. Termination

(a) Consultant acknowledges that Owner may cancel or terminate this Agreement at any time, in whole or in part, without incurring any penalty or damages on account of such cancellations or termination upon three (3) days' written notice, in which event, except as otherwise provided herein, all of Owner's liability hereunder shall cease and terminate as of the date specified in such notice.

(b) If Owner shall so terminate this Agreement for reasons other than those set forth in subsection 6(c), then, with respect to the Work which is the subject of such termination, Consultant shall be entitled to that portion of the Fee which has not theretofore been paid to Consultant and which shall compensate Consultant for all such Work actually and satisfactorily performed by it up to the date of such termination.

(c) Anything herein contained to the contrary notwithstanding, if:

(i) Consultant shall fail to diligently, timely and expeditiously perform any of its obligations as set forth in the Agreement;

(ii) Any representation or warranty made or deemed to have been made under this Agreement by Consultant shall prove to be untrue in any material respect;

(iii) Consultant shall make a general assignment for the benefit of its creditors, or a receiver or trustee shall have been appointed on account of Consultant's insolvency, or Consultant otherwise shall be or become insolvent, or an order for relief shall have been entered against Consultant under Chapter 7 or Chapter 11 of Title 11 of the United States Code;

(iv) a breach of any covenant or agreement contained in Section 16 of this Agreement or any other section of this Agreement shall occur; or

(v) Consultant otherwise shall be in default hereunder;

then Owner may terminate this Agreement as to Consultant for cause, in accordance with the procedure set forth in Subsection 6(a) hereof. Upon termination pursuant to this Subsection 6(c), Consultant shall be entitled to that portion of the Fee which has not theretofore been paid to Consultant and which shall compensate Consultant for all Work actually and satisfactorily performed by it up to the date of termination, provided, however, that Owner shall deduct from any such amount all additional costs and expenses which Owner may incur to correct and/or complete the Work over those which Owner would have incurred in connection with the Work if Owner had not so terminated this Agreement for cause. Nothing contained in this Agreement shall limit in any manner any and all rights or remedies otherwise available to Owner by reason of a default by Consultant under this Agreement, including, without limitation, the right to seek full reimbursement from Consultant for all costs and expenses incurred by Owner by reasons of Consultant's default hereunder and which Owner would not have otherwise incurred if Consultant had not defaulted hereunder.

(d) Upon any termination of this Agreement in accordance with the provisions of this Section 6, Consultant shall, with respect to the Work which is the subject of such termination:

(i) discontinue all its services from and after the date of the notice of termination, except as may be required to complete any item or portion or services to a point where discontinuance will not cause unnecessary waste of duplicative work or cost;

(ii) terminate, or if so directed by Owner, transfer to Owner all Subconsultant contracts, commitments and other agreements made by Consultant relating to the Work;

(iii) transfer to owner in the manner, to the extent, and at the time directed by Owner, all supplies, materials and other property produced as a part of, or acquired in the performance of the Work; and

(iv) take other actions as Owner may reasonably direct.

(e) In the event that the Consultant, having been terminated for cause pursuant to subsection 6(c), thereafter obtains a determination, in a judicial

or other action or proceeding, that such termination was unwarranted, without basis, or invalid for any reason, then the termination shall be deemed to have been one for the convenience of Owner and Consultant shall be entitled to be reimbursed and paid as provided in subsection 6(b) but to no other payments or damages.

(f) Every Subconsultant contract shall include (1) a provision authorizing termination by the Consultant (in form and substance similar to subsection 6(a) through 6(d)) in the event of a termination of the Consultant by the Owner, and (2) a provision under which the Subconsultant agrees that its obligations shall be assigned to the Owner, at Owner's option, upon a termination of this Agreement under subsection 6(a), 6(b) or 6(c).

7. Suspension

Owner may, at any time and for any reason, direct Consultant to delay or suspend the Work or any part thereof under this Agreement for a period of time. Such direction shall be in writing and shall specify the period during which such Work is to be stopped. Consultant shall resume such Work upon the date specified in such direction, or upon such other date as Owner may thereafter specify in writing upon reasonable notice to Consultant, provided, however, that if Owner shall direct a Work stoppage period of more than three (3) months, Consultant, no later than seventy five (75) days prior to the final day of such Work stoppage period may terminate this Agreement and shall be entitled upon such termination to payment of such amount of the Fee which has not theretofore been paid to Consultant and which shall compensate Consultant for the Work actually and satisfactorily performed by it prior to the termination date.

8. Assignment

Consultant shall have no right to assign, transfer, convey, pledge or otherwise dispose of Consultant's interest in this Agreement without the prior express written consent of Owner.

9. Ownership of Documents

All plans, models and other material prepared and furnished by Consultant or any Subconsultants in connection with the Work shall become the property of Owner. Such documents may be used by Owner, in whole or in part, or in modified form, for all purposes Owner may deem advisable without further employment of, or payment of any additional compensation to, Consultant.

10. Insurance

(a) Consultant shall provide, or cause to be provided, and thereafter shall

keep or cause to be kept in full force and effect the following insurance:

(i) Workers' Compensation and New York State Disability Benefits Insurance covering all persons employed or retained by Consultant or Subconsultants in connection with the Work.

(ii) Professional Liability Insurance with limits of liability in amounts not less than Two Million Dollars (\$2,000,000) for Consultant, and not less than One Million Dollars (\$1,000,000) for each Subconsultant insuring Consultant, each Subconsultant and any of their respective officers, directors, stockholders, employees, consultants and partners, for liability arising out of the carrying out of Consultant's or Subconsultant's professional responsibilities for the Work. All such professional liability policies shall include coverage for contractual liability, including the matters set forth in Section 17 hereof.

[INCLUDE FOLLOWING VALUABLE PAPERS INSURANCE AS SET FORTH ABOVE WHERE NATURE OF WORK INVOLVES PREPARATION OF ARCHITECTURAL/ENGINEERING DOCUMENTS SUCH AS DESIGN DRAWINGS AND SCHEMATICS.]

(iii) Valuable Papers Insurance insuring, for the benefit of Consultant and Owner all plans, designs, drawings, specifications and documents used under this Agreement by Consultant or any Subconsultant in a total amount of not less than Fifty Thousand Dollars (\$50,000). Consultant may furnish full coverage under one policy or may submit separate policies from the Subconsultants for their proportionate shares of such coverage

[INCLUDE FOLLOWING GENERAL AND AUTOMOBILE LIABILITY INSURANCE WHERE NATURE OF WORK INVOLVES PHYSICAL PRESENCE OF CONSULTANT ON SITE, EXCEPT MERE ATTENDANCE AT MEETINGS]

(iv) Comprehensive General Liability covering the liability of Consultant for all the Work and operations relating thereto and all obligations assumed by Consultant under this Agreement in an amount which shall not be less than the following limits:

Combined Single Limits, Bodily Injury
and Property Damage Liability
\$2,000,000 Aggregate
\$1,000,000 Each Occurrence

The said insurance shall name Owner, Battery Park City Parks Conservancy Corporation and the State of New York as additional insureds as respects this location shall, where applicable, be written on an occurrence basis and shall contain a provision that it is primary and that any similar insurance which Owner, Consultant or a Subconsultant elects to carry for their own benefit is secondary or excess and not contributing insurance.

(v.) Automobile Liability and Property Damage Insurance as follows: A policy covering the use in connection with the Work of all owned, non-owned and hired vehicles bearing, or under the circumstances under which such vehicles are being used being required by the Motor Vehicle Laws of the State of New York to bear license plates. The coverage under such policy shall not be less than the following limits:

Combined Single Limits,
Bodily Injury and Property Damage Liability

\$1,000,000 per each occurrence.

(vi) Excess Liability Insurance in an amount of not less than Two Million Dollars (\$2,000,000).

(vii) Comprehensive Crime/Employee Dishonesty Insurance in a reasonable amount or an amount which is customary in the applicable industry, trade or profession.

(b) All required insurance shall be maintained with responsible insurance carriers authorized to do business in the State of New York and approved by Owner. Upon execution of this Agreement and before commencing any performance hereunder, Consultant shall deposit with Owner the original policies of insurance, or certificates therefor, bearing notations or accompanied by other evidence satisfactory to Owner of the payment of all premium payments thereunder. Thereafter, certification of all premium payments shall be deposited with Owner not less than ten (10) days before the expiration dates of the policies. In the case of Valuable Papers Insurance, original policies, not certificates, must be deposited.

(c) Riders providing substantially as follows shall be made a part of the insurance policies described in Subsection 10(a) hereof, as applicable:

(i) the policy shall not be canceled, terminated, or allowed to expire, or the coverage thereof materially reduced, until thirty (30) days after receipt of written notice thereof by certified or registered mail, return receipt requested addressed to Owner; and

(ii) violation of any of the terms of the policy, or any other policy issued by the Company, shall not by itself invalidate such policy.

(d) The insurance policies required by this Section 10 shall be kept in full force and effect for the periods specified hereunder:

(i) Worker's Compensation and New York State disability benefits insurance [**Comprehensive Crime/Employee Dishonesty Insurance, Excess Liability Insurance, general liability insurance and automobile liability insurance, if applicable**] shall be kept in force until receipt of final payment by Consultant hereunder. This Agreement shall be void and of no force or effect unless, in compliance with the Workers' Compensation Law, Consultant, or Subconsultants, as the case may be, shall secure Workers Compensation Insurance for such of their respective employees engaged in the performance of the Work as are required to be insured under said law.

(ii) Professional Liability Insurance shall be kept in force for the earlier of six (6) years after the completion of the performance of the Work hereunder or six (6) years after termination of this Agreement.

(iii) Valuable Papers Insurance shall be kept in full force and effect until final delivery of all documents prepared by Consultant and/or Subconsultants in connection with the Work.

11. Authority of Owner

The Work shall be subject to the general supervision, direction, control and approval of Owner or its authorized representative, whose decision shall be final and binding upon Consultant as to all matters arising in connection with or relating to this Agreement. Owner shall determine all matters relative to the fulfillment of this Agreement on the part of Consultant and such determination shall be final and binding on Consultant. However, nothing in this paragraph shall excuse or relieve Consultant of its failure to comply with any of its responsibilities hereunder.

12. Entire Agreement

This Agreement, including Owner's Prompt Payment Policy annexed hereto, constitutes the entire Agreement between Owner and Consultant, and any prior agreements or understandings between Owner and Consultant with respect to any portion of the Work are hereby merged into and with this Agreement.

13. Consultant as Independent Contractor

Notwithstanding any other provision of this Agreement, Consultant's status shall be that of an independent contractor and not that of a servant, agent or employee of Owner. Accordingly, Consultant shall not hold itself out as, nor claim to be acting in the capacity of, an officer, agent, employee or servant of Owner.

14. Maintenance, Audit and Examination of Accounts

Consultant shall, until the earlier of six (6) years after completion of the performance of the Work or six (6) years after termination of this Agreement, or, in the event of litigation concerning the Consultant's Work, until the conclusion of such litigation, maintain, and require all Subconsultants to maintain, complete and correct books and records relating to all aspects of Consultant's obligations hereunder, including without limitation, accurate cost and accounting records specifically identifying the costs incurred in performing their respective obligations, and shall make such books and records available to Owner or its authorized representatives for review and audit at all such reasonable times as Owner from time to time may request. In the event that Consultant and/or any Subconsultants shall fail to comply with the provisions of this Section 14, and as a result thereof shall be unable to provide reasonable evidence of such compliance, Owner shall not be required to pay any portion of the Fee and Reimbursable Expenses then due or next becoming due, as the case may be, with respect to such items, and if such compensation has already been paid, Owner may require Consultant to refund any such payment made. Any excessive audit costs incurred by Owner due to Consultant's or any Subconsultant's failure to maintain adequate records shall be borne by Consultant.

15. Acceptance of Final Payment; Release and Discharge

The acceptance by Consultant of the final payment under this Agreement, or any final payment due on earlier termination of this Agreement under Section 6 hereof, shall constitute a full and complete waiver and release of Owner from any and all claims, demands and causes of action whatsoever which Consultant, and/or its successors and assigns have, or may have, against Owner under the provisions of this Agreement, unless a detailed and verified statement of claim is served upon Owner not later than the making of the final payment. It is expressly understood and agreed that Owner's or Consultant's termination of this Agreement pursuant to Sections 6 or 7 hereof shall not give rise to any claim against Owner for damages, compensation or otherwise as a result of such termination, and that under such circumstances Owner's liability to make payments to Consultant on account of any and all Work shall be limited to the payments set forth in Section 6 or Section 7, as the case may be.

16. Covenants, Representations and Warranties

(a) Consultant represents and warrants to Owner that:

(i) no public official is directly or indirectly interested in this Agreement, or in the supplies, materials, equipment, work, labor or services to which it relates or in any of the profits thereof;

(ii) Consultant has, and should have, no financial interest in the property owned by, or the activities conducted by, Owner which might reasonably be

construed to create the appearance of impropriety in connection with Consultant's performance of its obligations under this Agreement; and

(iii) to the best of its knowledge, upon due inquiry, no officer, member, partner or employee of Consultant has, prior to the date of this Agreement, been called before a grand jury, head of a state agency, head of a city department or other city agency to testify in an investigation concerning any transaction or contract had with the State of New York, any political subdivision thereof, a public authority, or with any public department, agency or official of the State of New York or any political subdivision thereof and refused to sign a waiver of immunity against subsequent criminal prosecution or to answer any relevant question concerning such transaction or contract.

(b) Consultant covenants and agrees that:

(i) recognizing that time for completion of the Work is of the essence, Consultant shall perform all of its obligations hereunder in a prompt and workmanlike manner and in accordance with the time periods for the Work set forth herein;

(ii) the personnel assigned and Subconsultants used by Consultant in the performance of its obligations hereunder shall be qualified in all respects for such assignment, employment and use;

(iii) Consultant, in the performance of its obligations hereunder, shall utilize the most efficient available methodology and technology for the purpose of reducing the cost and time of such performance;

(iv) Consultant shall comply with the provisions of all Federal, State and local statutes, laws, rules, ordinances and regulations that are applicable to the performance of this Agreement;

(v) should any claim be made or any action be brought against the Owner which is in any way related to the Work, Consultant shall diligently render to Owner any and all assistance which may be required by Owner as a result thereof; and

(vi) Consultant shall not commit its personnel to, nor engage in, any other projects during the term of this Agreement to the extent that such projects may adversely affect the quality or efficiency of the Work or would otherwise be detrimental to the conduct and completion of the Work and Consultant shall provide sufficient numbers of qualified personnel as shall be required to perform the Work in the time requested by Owner.

17. Indemnity

(a) To the fullest extent permitted by law, Consultant shall be liable to,

and shall indemnify Owner, each Member, officer, agent and employee of Owner (the "Indemnitees") for, and shall hold each of the foregoing harmless from and against, any and all claims, losses, damages, expense, penalties, costs or other liabilities, including, without limitation, attorneys' fees and disbursements, arising out of the performance of the Work or the breach of any of the provisions set forth in Section 16 hereof, except to the extent caused by or resulting from the negligence of an Indemnatee, and Consultant shall defend any suit or action brought against Owner or any Indemnatee which is based on any loss or liability or alleged loss or liability indemnified herein, except that the CM shall not be required to indemnify or hold harmless the Indemnitees against liability for damages arising out of bodily injury to persons or damage to property caused by or resulting from the negligence of an Indemnatee.

(b) Consultant shall be liable to, and shall indemnify the Indemnitees for, and shall hold each of the foregoing harmless from and against, any and all claims made against any of the foregoing for infringement of any copyright, trademark or patent arising out of the use of any plans, designs and specifications furnished by Consultant in the performance of this Agreement.

(c) Consultant shall include in each contract it enters into with a Subconsultant (as defined below) a provision whereby the Subconsultant shall be liable for and agree to indemnify, defend and hold harmless the Indemnitees in terms substantially similar to those pertaining to Consultant in the preceding subsections of this Section 17.

18. Confidentiality

Consultant hereby agrees that data, recommendations, reports and other materials developed in the course of the Work are strictly confidential between Consultant and Owner and except as specifically provided herein, Consultant may not at any time reveal or disclose such data, recommendations or reports in whole or in part to any third party without first obtaining written approval from Owner.

19. Modification

No change, termination or purported waiver of any of the provisions of this Agreement shall be binding unless in writing and signed by the party to be bound.

20. Waiver

No failure to enforce or exercise any right, remedy, privilege or recourse accorded to either party under this Agreement shall diminish or waive the right, remedy, privilege or recourse, or affect the entitlement of either party thereafter to enforce or exercise the same in the event of another situation, whether or not similar.

21. Severability

If any term or provision of this Agreement or the application thereof to any person or in any circumstance shall to any extent be determined to be invalid or unenforceable, the remaining provisions of this Agreement, or the application of such terms or provisions to persons or circumstances other than those as to which it is found to be invalid or unenforceable, shall in no way be affected thereby, and each term and provision of this Agreement shall be valid and binding upon the parties, and enforced to the fullest extent permitted by law.

22. Applicable Law, Forum and Jurisdiction

(a) This Agreement shall be construed under, and be governed by, the laws of the State of New York.

(b) All actions or proceedings relating, directly or indirectly, to this Agreement shall be litigated only in courts located within the County of New York.

(c) Consultant, any guarantor of the performance of its obligations hereunder ("Guarantor") and their successors and assigns hereby subject themselves to the jurisdiction of any state or federal court located within such county, waive the personal service of any process upon them in any action or proceeding therein and consent that such process be served by certified or registered mail, return receipt requested, directed to the Consultant and any successor at Consultant's address hereinabove set forth, to Guarantor and any successor at the address set forth in the instrument of guaranty and to any assignee at the address set forth in the instrument of assignment. Such service shall be deemed made two days after such process is so mailed.

23. Provisions Required by Law

All provisions required by law to be included in this Agreement shall be deemed to be included herein with the same effect as if set forth in full herein.

24. Notices

Any notice, approval, consent, acceptance, request, bill, demand or statement required or permitted to be given hereunder (a "Notice") from either party to the other shall be in writing, and shall be deemed given: (i) when delivered (if delivered by hand); (ii) one business day after the date when deposited with a reputable national overnight courier service; or (iii) three business days after the date when deposited with the United States Postal Service in a postage prepaid envelope, certified or registered mail. If to Owner, Notices shall be sent to the attention of _____, with a copy to the General Counsel, and if to Consultant, Notices shall be sent to the attention of _____. All Notices shall be addressed to the other party as set forth above; however, either party may at any time change such address or add additional individuals to receive a Notice by mailing, as aforesaid, to the other party a Notice thereof.

25. Approval and Use of Subconsultants

(a) Except as specifically provided herein, Consultant shall not employ, contract with or use the services of any Subconsultants in connection with the performance of its obligations hereunder without the prior written consent of Owner to the use of each such Subconsultant, and, at Owner's option, to the agreement to be entered into between Consultant and any such Subconsultant. Consultant shall inform Owner in writing of any interest it may have in a proposed Subconsultant. No such consent by Owner, or employment, contract, or use by Consultant, shall relieve Consultant of any of its obligations hereunder. **[Owner hereby approves the following Subconsultant(s): .]**

(b) Consultant shall be responsible for the performance of the Work of any Subconsultants engaged, including the maintenance of schedules, coordination of their Work and resolutions of all differences between or among Consultant and any Subconsultants. It is expressly understood and agreed that any and all Subconsultants engaged by Consultant hereunder shall at all times be deemed engaged by Consultant and not by Owner. However, the parties recognize, and any Subconsultants engaged by Consultant shall be advised, that Owner shall be a third-party beneficiary of any agreement between Consultant and a Subconsultant. At the request of Owner, Consultant shall provide Owner a copy of any such agreement between Consultant and a Subconsultant.

(c) Consultant shall cause any Subconsultant employed by the Consultant in connection with this Agreement to execute a copy of this Agreement wherein such Subconsultant shall acknowledge that it has read and is fully familiar with the terms and provisions hereof and agrees to be bound thereby as such terms and provisions are or may be applicable to such Subconsultants.

26. Employment And Affirmative Action

26.1 Definitions

The following terms shall have the meanings set forth below for the purposes of this Article 26:

(a) "Affirmative Action Program." The program by which Owner shall monitor Consultant's compliance with the requirements set forth in (i) the MBE/WBE Required Participation Plan and (ii) the Utilization Plan.

(b) "Certified Business." A business verified as a minority or women-owned business enterprise by the Division or such other New York State agency authorized to make such certification.

(c) "Division". The Division of Minority and Women's Business Development of the New York State Department of Economic Development.

(d) "Director." The Director or the Executive Director of the Division.

(e) "Directory." The directory of certified businesses prepared by the Director for use by Owner and consultants in complying with the provisions of the Executive Law of the State of New York, Article 15-A.

(f) "MBE/WBE Required Participation Plan." The plan previously submitted by a Consultant to Owner listing the certified MBEs and/or WBEs which the Consultant intends to use in the performance of this agreement in order to ensure that MBEs and WBEs are awarded a fair share of the total dollar value that is to be paid for the Work.

(g) "Minority Group Member." A United States citizen or permanent resident alien who is and can demonstrate membership in one of the following groups:

- (i) Black persons having origins in any of the Black African racial groups;
- (ii) Hispanic persons of Mexican, Puerto Rican, Dominican, Cuban, Central or South American descent of either Indian or Hispanic origin, regardless of race;
- (iii) Native American or Alaskan native persons having origins in any of the original peoples of North America; or
- (iv) Asian and Pacific Islander persons having origins in any of the Far East countries, South East Asia, the Indian subcontinent or the Pacific Islands.

(h) "Minority-owned Business Enterprise" ("MBE"). A business enterprise, including a sole proprietorship, partnership or corporation that is:

- (i) at least 51 percent owned by one or more Minority Group Members;
- (ii) an enterprise in which such minority ownership is real, substantial and continuing;
- (iii) an enterprise in which such minority ownership has and exercises the authority to control and operate, independently, the day-to-day business decisions of the enterprise; and

- (iv) an enterprise authorized to do business in the State of New York and is independently owned and operated.

(i) "Subcontract". An agreement providing for a total expenditure in excess of \$25,000 for the performance of any portion of the Work between Consultant and any individual or business enterprise, including a sole proprietorship, partnership, corporation, or not-for-profit corporation, in which a portion of a contractor's obligation is undertaken or assumed.

(j) "Utilization Plan." A plan previously submitted by Consultant to Owner which sets forth the proposed percentages of employees who are either Minority Group Members or women and who will be used by Consultant to perform the Work.

(k) "Women-owned Business Enterprise" ("WBE"). A business enterprise, including a sole proprietorship, partnership or corporation that is:

- (i) at least 51 percent owned by one or more United States citizens or permanent resident aliens who are women;
- (ii) an enterprise in which the ownership interest of such women is real, substantial and continuing;
- (iii) an enterprise in which such women ownership has and exercises the authority to control and operate, independently, the day-to-day business decisions of the enterprise; and
- (iv) an enterprise authorized to do business in the State of New York and which is independently owned and operated.

26.2 Equal Employment Opportunities for Minority Group Members and Women

- (a) During the performance of the Work, Consultant agrees as follows:
 - (i) Consultant shall not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability or marital status; shall undertake or continue existing programs of affirmative action to ensure that Minority Group Members and women are afforded equal employment opportunities without discrimination; and shall make and document its good faith effort to achieve prompt and full utilization of Minority Group Members and women at all levels and in all segments of its work force where deficiencies exist.

- (ii) At the request of Owner, Consultant shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union, or representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of Consultant's obligations herein.
- (iii) Consultant shall state in all solicitations or advertisements for employees that in the performance of the Work, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.
- (iv) Consultant and any Subconsultant shall be required to submit compliance reports in accordance with this Section 26 relating to their operations and the implementation of the Affirmative Action Program in effect as of the date of execution of this Agreement.

(b) Consultant shall include the provisions of subdivision (a) of this section in every Subcontract in such a manner that the provisions will be binding upon each Subconsultant as to the Work in connection with this contract's execution.

- (c) (i) The provisions of this section shall not be binding upon Consultant or its Subconsultants in the performance of Work or the providing of services, or any other activities that are unrelated, separate or distinct from this Agreement as expressed by its terms.
- (ii) The requirements of this section shall not apply to any employment outside New York State, or application for employment outside such state, or solicitations, or advertisements therefore, or any existing programs of affirmative action regarding employment outside New York State and the effect of contract provisions required by this section shall be so limited.

(d) The parties agree to be bound by provisions of Article 15-A, Section 317 of the Executive Law of the State of New York and by the regulations adopted pursuant thereunder.

26.3 Workforce Participation

(a) Consultant is required to make good faith efforts to achieve the participation of ___ % Minority Group Members and ___ % women in the personnel utilized by Consultant in the Work as set forth in the Utilization Plan.

(b) If practicable, the participation for Minority Group Members and women employees must be substantially uniform throughout the work.

(c) Consultant shall not participate in the transfer of Minority Group Member employees or women employees from employer to employer or from project to project for the sole purpose of satisfying the participation goals above set forth.

(d) In achieving such participation, Consultant is required to make good faith efforts to find and employ qualified Minority Group Members and women supervisory personnel and staff.

(e) Consultant shall meet with Owner, and such other persons as Owner may invite, on a periodic basis as required by Owner to discuss issues relating to Minority Group Members and women workforce participation. At such meetings, Consultant shall report on the names of its Subconsultants then engaged on the project to which the Work relates or which within 60 days are scheduled to be engaged on such project, on the nature of the work and anticipated schedule of Consultant and Subconsultants, on the anticipated hiring needs of Consultant and Subconsultants, on the names of the responsible supervisors directly employed by Consultant, and such information requested by Owner that will then promote the employment of Minority Group Members and women. Consultant shall use its best efforts to obtain the above information and shall, upon Owner's request, cause its Subconsultants to attend said meetings and provide the above information.

(f) Compliance reports with respect to the Utilization Plan ("Utilization Compliance Reports") shall be submitted to Owner's Affirmative Action officer on a monthly basis and shall be in accordance with the following:

- (i) Owner may require that Consultant submit Utilization Compliance Reports for the duration of this contract to Owner regarding Consultant's operation and implementation of the Utilization Plan portion of the Affirmative Action Program in effect as of the date of execution of this Agreement.

- (ii) The Utilization Compliance Reports shall include information on any Subconsultant involved in the performance of the contract with regard to the Subconsultant's compliance with the Affirmative Action Program.

(iii) The Utilization Compliance Reports shall include, but are not limited to the following:

- (1) a breakdown of the Subconsultants by ethnic background, gender or such other categories as may be required by Owner;
- (2) the actions the Consultant and Subconsultants have taken to meet the components of the Affirmative Action Program;
- (3) how Consultant and Subconsultants intend to utilize participation of Minority Group Members and women in their workforce in connection with the performance of the Work and timetables therefor during the remainder of their performance of the Work.

(g) Any failure by Consultant to submit a required Utilization Compliance Report, including information on any of its Subconsultant's compliance, may be deemed a breach of contract with respect to this agreement.

26.4 Minority Business Enterprise (MBE) Participation and Women's Business Enterprise (WBE) Participation

(a) Consultant shall make good faith efforts to attain the participation of ___% MBEs and ___% WBEs in the total dollar value of the Work.

(b) The total dollar value of the Work for purposes of determining compliance with the MBE/WBE Required Participation Plan shall be calculated as follows:

- (i) if an MBE and WBE is not the Consultant -- the dollar value of the Work subcontracted to MBEs and WBEs; provided, however, that where materials are purchased from an MBE and WBE which acts merely as a conduit for goods manufactured or produced by a non-MBE and non-WBE, only that portion of the price paid for such materials which will accrue as profit to the MBE or WBE and/or the Fee received by the MBE and WBE shall be included;

- (ii) if Consultant is a joint venture including one or more MBEs and WBEs as joint venturers -- the Fee multiplied by the percentage of the joint venture's profits (or losses) which are to accrue to the MBE and WBE joint venturer(s) under the joint venture agreement; and
- (iii) if an MBE and WBE is Consultant or where Consultant is a joint venture consisting entirely of MBEs and WBEs -- the Fee.

(c) Compliance reports with respect to the MBE/WBE Required Participation Plan ("MBE/WBE Compliance Reports") shall be required as follows:

- (i) MBE/WBE Compliance Reports shall be submitted to Owner and shall include information with respect to:
 - (1) dividing the Work to be subcontracted into smaller portions, where economically and technically feasible;
 - (2) actively and affirmatively making a good faith effort to solicit bids for subcontracts from qualified MBEs and WBEs identified in the directory of certified businesses available at the office of the Owner's Affirmative Action Officer, including the circulation of solicitations to minority contractor associations. Consultant shall maintain records detailing the efforts made to provide for meaningful MBE and WBE participation in the Work, including the names and addresses of all MBEs and WBEs contacted and, if any such MBE or WBE is not selected as a joint venture or subcontractor, the reasons for such decision;
 - (3) making plans and specifications for prospective work available to MBEs and WBEs in sufficient time for review;
 - (4) utilizing the services and cooperating with those organizations providing technical assistance to Owner in connection with the participation of MBEs and WBEs in the project to which the Work relates;
 - (5) encouraging the formation of joint ventures, partnerships or other similar arrangements among subcontractors where appropriate;
 - (6) ensuring that provision is made to provide progress payments to MBEs and WBEs on a timely basis; and

(7) not requiring bonds from and/or providing bonds and insurance for MBEs and WBEs where appropriate, and/or assisting in obtaining bonds and insurance for MBEs and WBEs where feasible.

(ii) MBE/WBE Compliance Reports which shall be submitted to the Affirmative Action Officer on the monthly basis.

(iii) MBE/WBE Compliance Reports shall also include, but not be limited to, the following information:

- (1) the name, address and telephone number of each certified MBE and WBE which Consultant is using or intends to use to comply with the MBE/WBE Required Participation Plan.
- (2) a brief description of the contract scope of work to be performed for the Consultant by each certified MBE and WBE and the scheduled dates for performance;
- (3) a statement of whether Consultant has a written agreement with each certified MBE and WBE which Consultant is using or intends to use, and if requested, copies of such agreements;
- (4) the actual total cost of the contract scope of work to be performed by each certified MBE and WBE for this Agreement; and
- (5) The actual amounts of any payments made by Consultant to each certified MBE and WBE as of the date the MBE/WBE Compliance Report was submitted.

(d) The parties agree to be bound by provisions of Article 15-A, Section 317 of the Executive Law of the State of New York and by the regulations promulgated thereunder.

27. Interest of Others

Nothing in this Agreement shall be construed to give any person other than Owner and Consultant any legal or equitable right, remedy or claim. This Agreement shall be held to be for the sole and exclusive benefit of Owner and Consultant.

28. Executory Contract

It is understood by and between the parties hereto that this Agreement shall be deemed executory to the extent of the monies available to Owner and no liability on account thereof shall be incurred by Owner beyond monies available for the purpose thereof. In no event shall any claim be asserted under this Agreement by Consultant or any Subconsultant against any member, officer, employee, lessee, consultant or agent of Owner, or the State of New York. By execution of this Agreement, Consultant agrees to look solely to Owner with respect to any claim which may arise.

29. Participation in International Boycott Prohibited

Consultant agrees, as a material condition of this Agreement, that neither Consultant nor any substantially owned or affiliated person, firm, partnership or corporation has participated or is participating or shall participate in an international boycott in violation of the provisions of the United States Export Administration Act of 1969, as amended, or the Export Administration Act of 1979, as amended or the Regulations of the United States Department of Commerce promulgated thereunder. This Agreement shall be rendered forfeit and void by the Comptroller of the State of New York if, subsequent to execution, such person, firm, partnership or corporation has been convicted of a violation of the provisions of either of such federal acts or such Regulations or has been found upon the final determination of the United States Commerce Department or any other appropriate agency of the United States to have violated the provisions of either of such federal acts or such Regulations.

30. MacBride Fair Employment Principles

If the amount payable to Consultant under this Agreement is greater than \$15,000, Consultant hereby certifies that it and/or any individual or legal entity in which it holds a 10% or greater ownership interest, and any individual or legal entity that holds a 10% or greater ownership in it, either have no business operations in Northern Ireland, or shall take lawful steps in good faith to conduct any business operations they have in Northern Ireland in accordance with the MacBride Fair Employment Principles relating to nondiscrimination in employment and freedom of workplace opportunity regarding such operations in Northern Ireland, as set forth in Section 165 (5.) of New York's State Finance Law, and shall permit independent monitoring of their compliance with such Principles.

31. Limitation Periods

Any legal action or proceeding against the Owner must be commenced no later than one (1) year after the earlier of: (a) the termination of this Agreement, or (b) the last day the Consultant performed work physically at the site of the Project.

32. Special Provisions

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

(Preparer's initials: _____)

BATTERY PARK CITY AUTHORITY
(d/b/a Hugh L. Carey Battery Park City Authority)

By: _____
Name: _____
Title: _____

[CONSULTANT]

By: _____
Name: _____
Title: _____

Appendix II:
Form of Performance and Payment Bonds

Not Required for Consultant Contracts

Controlled Inspections for Pier A
Core and Shell Phase III

Prompt Payment Policy

Appendix III

Prompt Payment Policy

PROMPT PAYMENT POLICY
OF THE
BATTERY PARK CITY AUTHORITY

Section 9002.1. Statement of Policy and Purpose. The Battery Park City Authority is a body corporate and politic, constituting a public benefit corporation, established by Chapter 343 of the Laws of 1968. This Prompt Payment Policy is adopted pursuant to Section 2880 of the Public Authorities Law, requiring each public benefit corporation to promulgate rules and regulations detailing its policy with respect to making prompt payment to contractors.

Section 9002.2. Definitions. For the purpose of this Part, the following terms shall have the following meanings unless the context shall clearly indicate otherwise:

- (a) "Authority" shall mean the Battery Park City Authority.
- (b) "Contract" shall mean an enforceable agreement entered into by the Authority and a Contractor, including purchase orders. Bond resolutions and any leases to which the Authority is a party, including any leases between the Authority and any of its tenants or subtenants, as well as any related agreements which are an integral part of such leases or subleases, are not Contracts within the meaning of this Section.
- (c) "Contractor" shall mean any person, partnership, private corporation or association providing or performing any of the following pursuant to a Contract:
 - (i) selling materials, equipment or supplies or leasing property or equipment to the Authority;
 - (ii) constructing, reconstructing, rehabilitating or repairing buildings, streets or other improvements for or on behalf of the Authority; or
 - (iii) rendering or providing services to the Authority.
- (d) "Designated Payment Office" shall mean that department within the Authority to which a proper invoice is to be submitted by a Contractor; unless otherwise specified, the Designated Payment Office shall be:

Office of the Treasurer
Battery Park City Authority
One World Financial Center
24th Floor
New York, NY 10281-1097

Attn: Accounts Payable

(e) "Prompt Payment" shall mean payment of a debt due and owing by the Authority pursuant to a Contract before interest accrues thereon pursuant to the provisions of this Part.

(f) "Proper Invoice" shall mean a written request or invoice for contract payment setting forth the description, price and quantity of goods, property or services provided by a Contractor, such request or invoice being both in accordance with the terms of the Contract and in such form, and supported by such other substantiating documentation, as the Authority may reasonably require.

(g) "Receipt of a Proper Invoice" shall mean either

- (i) the date on which a Proper Invoice is received by the Designated Payment Office; or
- (ii) the date on which the Authority receives the purchased goods, property or services covered by the Proper Invoice, whichever is later.

(h) "Set-off" shall mean the reduction by the Authority of a payment due to a Contractor by an amount equal to the amount of an unpaid legally enforceable debt owed by the Contractor to the Authority.

Section 9002.3. Applicability. This Part shall apply to all Contracts entered into on or after April 29, 1988.

Section 9002.4. (a) Payment Request Procedure. Contractors owed money by the Authority shall deliver a Proper Invoice to the Designated Payment Office. The Designated Payment Office will log the receipt date of each invoice, and send it to the department unit within the Authority that received the goods, property or services from the Contractor for review and verification of the Contractor's performance in accordance with the Contract. Contractors with Contracts which provide for payment at specific dates or intervals shall also be required to provide a Proper Invoice which certifies that the obligations required under such Contract have been performed prior to such date(s) or during such interval(s) and review and verification of the work of these Contractors will take place upon receipt of such Proper Invoice; payment shall be made in accordance with the terms of such Contracts.

(b) Prompt Payment Schedule. The schedule of the time in which the Authority will make prompt payment under a Contract is as follows:

- (i) for invoices received on or before June 30, 1989, payment will be made by the Authority within 45 calendar days after Receipt of a Proper Invoice;
- (ii) for invoices received on or after July 1, 1989, payment will be made by the Authority within 30 calendar days, excluding legal holidays, after Receipt of a Proper Invoice;
- (iii) for contracts which provide for payment at one or more specific dates or intervals, payment will be made in accordance with the terms of such Contracts, but interest shall only be payable if payment is not made within the time provided in (i) and (ii) above; and
- (iv) this schedule will not apply in those instances where payment is being delayed by reason of any of the exceptions listed in Section 9002.4(e) or where the time in which to make payment is being tolled for any of the reasons listed in Section 9002.4(f) herein, in which cases the time for payment shall be as there provided.

(c) Interest Computation. If the Authority fails to make payment in accordance with the prompt payment schedule set forth in Section 9002.4(b) above, the Authority will pay interest to the affected Contractor at the rate equal to that set by the State Tax Commission for corporate taxes pursuant to Section 1096(e) of the Tax Law.

(d) Funds Available to Pay Interest Penalties. The Authority will pay interest as provided herein with monies expenses pursuant to its approved budget.

(e) Extension of Payment Time. Any of the following facts, conditions or situations are determined by the Authority to be exceptions to the prompt payment schedule set forth in Section 9002.4(b) and to justify extensions of the time by which payment must be made (the amount of time of such extension being as established by the Authority's Treasurer consistent with this Part, with notice provided to the Contractor):

- (i) Statutory or Contract provisions requiring an inspection period or an audit prior to payment;
- (ii) the absence of a state appropriation which is necessary to authorize payment;
- (iii) a requirement for federal government examination of a Proper Invoice prior to payment;

- (iv) Extraordinary delay between the time of the provision of goods, property or services by a Contractor and the receipt of a Proper Invoice by the Authority;
 - (v) failure by a Contractor to submit documents required by the Contract or reasonably required by the Authority prior to payment;
 - (vi) where time is taken in the processing of an invoice by the State Department of Taxation and Finance, the State Division of the Budget, the Office of the State Comptroller, or any other entity external to the Authority that is or may be required by statute, regulation or Contract to approve or process Authority payments.
- (f) Defects or Improprieties. The following facts or conditions toll the prompt payment schedule set forth in Section 9002.4(b):
- (i) a reasonable belief by the Authority in the existence of any defect(s), including any incompleteness or failure of compliance with the terms of the Contract, in or with respect to the goods, property or services delivered;
 - (ii) a reasonable belief by the Authority in the existence of any defect(s) in the invoice; or
 - (iii) a reasonable belief by the Authority in suspected impropriety of any kind.

In order to toll the prompt payment schedule without penalty, the Authority has fifteen calendar days after receipt of an invoice to send a Contractor notification of such defects or improprieties. Authority notification shall be by letter to the Contractor setting forth any such defect or impropriety in reasonable detail, sent to the address indicated for notices under the Contract or, if no such address is provided, sent to the address set forth in the invoice, provided that, in the event the Authority fails to so notify the Contractor within such fifteen days, the sole effect of such failure to so notify the Contractor shall be that the number of days allowed for payment shall be reduced by the number of days between such fifteenth day and at the date of the Authority's transmitting such notification. In the event that the Authority fails to provide reasonable grounds for its contention that any such defect or impropriety exists, the date by which Contract payment shall be made shall be calculated from the date of receipt of an invoice.

Section 9002.5. (a) Annual Report. After the completion of each fiscal year ending after January 1, 1989, the Authority shall prepare an annual report on the scope and

implementation of this prompt payment policy. The report shall include, but not be limited to, the following:

- (i) A listing of the types or categories of contracts which the Authority entered into during the twelve month fiscal year covered by the report with an indication whether each such type or category of contract was subject to this prompt payment policy, and if it was not, the reason(s) why not;
- (ii) the number and amount of interest payments made for contracts, arranged according to each such type or category;
- (iii) the number of interest chargeable days, and the total number of days taken to process each late contract payment; and
- (iv) a summary of the principal reasons why such late payments occurred.

(b) Within ninety (90) days after the completion of each such fiscal year, copies of this annual report shall be filed with the State Comptroller, the State Director of the Budget, the Chairman of the Senate Finance Committee and the Chairman of the Assembly Ways and Means Committee.

(c) Copies of its annual report shall be made available to the public upon reasonable request at the Authority's main office.

Section 9002.6. (a) Amendment. The Authority shall have the power to amend this Part by promulgating amended rules and regulations at any time, and within thirty days of the adoption of any such amendments hereto, the Authority shall file copies with the State Comptroller, the State Director of the Budget, the Chairman of the Senate Finance Committee, and the Chairman of the Assembly Ways and Means Committee.

(b) Contract Incorporation. The policy statement in effect at the time that a Contract is entered into is hereby incorporated into and made a part of that Contract.

(c) Public Access. The Authority shall make copies of this policy statement available to the public upon reasonable request at the Authority's main office. The Authority shall also provide a copy of this policy statement to each Contractor at or prior to the time a Contract is entered into.

(d) Inapplicability. This policy is not applicable to payments due and owing by the Authority to any other governmental entity, agency, public benefit corporation or the employees thereof when acting in or incidental to their public employment capacity, to interest on judgements rendered by a court against the Authority pursuant to any other

provision of law, or to situations where the Authority exercises a legally authorized Set-off against all or part of a payment due a Contractor.

(e) Legal Processes. The Authority is under no liability to pay interest pursuant to this policy for any period after a Contractor has filed a claim, given notice of an intention to file a claim or commenced legal action seeking any payment of interest; interest

during such period shall only be paid as directed by the court in accordance with such other provisions of law as may be applicable

(f) Interpretation. This Part shall be interpreted consistent with and to fulfill the purposes of Section 2880 of the Public Authority Law.

Controlled Inspections for Pier A
Core and Shell Phase III

MBE/WBE
Statement of Non-Collusion

Appendix IV:
MBE/WBE Exhibits
&
Statement of Non-Collusion

**Exhibit
Part 3**

**BATTERY PARK CITY AUTHORITY
MBE/WBE REQUIRED PARTICIPATION PLAN**

Please fill out utilization plan for MBE/WBE(s) participation and use the same format for all additional MBE/WBE sub-consultants/vendors

CONSULTANT:	DATE
NAME:	
ADDRESS:	
CONTACT PERSON:	PHONE #
FEDERAL I.D. NO:	FAX #
IS CONSULTANT AN MBE/WBE? MBE WBE (Circle if one applies)	

MBE/WBE INFORMATION

SUB-CONSULTANT:	FEDERAL I.D. #
NAME:	WORK TO BEGIN:
ADDRESS:	
PHONE NUMBER:	TO FINISH ON:
CONTACT PERSON:	
ESTIMATED DOLLAR AMOUNT TO BE AWARDED TO MBE/WBE:	
SCOPE OF WORK TO BE DONE BY MBE/WBE	

MBE/WBE INFORMATION

SUB-CONSULTANT:	FEDERAL I.D.#
NAME:	WORK TO BEGIN
ADDRESS:	
PHONE NUMBER:	
CONTACT PERSON:	TO FINISH ON:
ESTIMATED DOLLAR AMOUNT TO BE AWARDED TO MBE/WBE:	
SCOPE OF WORK TO BE DONE BY MBE/WBE:	

Exhibit
Part 4

BATTERY PARK CITY AUTHORITY
UTILIZATION PLAN
WORKFORCE PERCENTAGE INFORMATION

Please fill out utilization plan for minority and female employees of Consultant to be included in this contract.

STAFF:	
MINORITY WORKFORCE:	%
FEMALE WORKFORCE	%

Statement Of Non-Collusion:

- I. By submission of this Proposal, Proposer and each person signing on behalf of Proposer certifies, (and in the case of a joint Proposal, each party thereto certifies) as to its own organization, under penalty of perjury, that to the best of his knowledge and belief:
 - A) The prices in this 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 Proposer or with any competitor.
 - B) Unless otherwise required by law, the prices which have been quoted in this Proposal have not been knowingly disclosed by the Proposer and will not knowingly be disclosed by the Proposer prior to opening, directly or indirectly, to any other Proposer or to any competitor.
 - C) No attempt has been made or will be made by Proposer to induce any other person, partnership, firm or corporation to submit or not to submit a Proposal for the purpose of restricting competition.
- II. A Proposal shall not be considered for award nor shall any award be made where sub-paragraphs IA, IB, and IC above have not been complied with; provided however, that if in any case Proposer cannot make the foregoing certification, the Proposer shall so state and shall furnish with its Proposal a signed statement which sets forth in detail the reasons therefore. Where sub-paragraphs IA, IB, and IC above have not been complied with, Proposer shall not be considered for award nor shall any award be made unless the Authority determines that such disclosure was not made for the purpose of restricting competition.

The fact that a Proposer (a) has published price lists, rates, or tariffs covering items being procured, (b) has informed prospective customers of proposed or pending publication of a new or revised price lists for such item, or (c) has sold the same items to other customers at the same prices being proposed, does not constitute, without more, a disclosure within the meaning of subparagraph IB above.
- III. This Proposal, if made by a corporate Proposer, shall be deemed to have been authorized by the board of directors of the Proposer and such authorization shall be deemed to include the signing and submission of the Proposal and the inclusion thereof of the statement of non-collusion as the act and deed of the corporation.

(Insert Name of Proposer and Sign Below)

By: _____
(PRINT Full legal name of person, firm, partnership or corporation)

(Signature and Title)

Address

City and State

Corporate I.D. Number

Federal I.D. Number

Date

MBE/WBE
Statement of Non-Collusion

If the Proposer is an individual, the Proposer's legal residence is as follows:

Street Address

City

State

If Proposer is a Firm or Partnership, complete the following:

NAME OF MEMBERS OR PARTNERS

LEGAL RESIDENCE

[illegible]

If Proposer is a Corporation complete the following:

NAMES OF ALL-OFFICERS

LEGAL RESIDENCE

President	
Vice President	
Secretary	
Treasurer	
Title	

Appendix V

General Description and Scope of Work

General Description

Intent

Battery Park City Authority (the "Authority") wishes to solicit the services of an independent testing agency to perform controlled inspection work.

General Description

Pier A is located at the southwest tip of Manhattan, between Battery Park City and historic Battery Park. Built in 1886 through an initiative by the New York City Department of Docks to improve New York's waterfront, it served as a central operation center to regulate harbor activity. In the 1950's the removal of then-called Department of Marine and Aviation and the Harbor Police from Pier A, ended the pier's long history as the control center for the harbor. Pier A was listed on the National Register of Historic Places in 1975 and was officially designated as a NYC landmark in 1977. A restoration of Pier A began in the 1990's that included structural repairs/modifications, a façade restoration, and updated mechanical, electrical, and plumbing service, but due to financial problems was only partially completed.

Pier A consists of a 3-story Headhouse structure and a 2-story Piershed structure. The overall plan dimensions of the pier are 45ft wide by 325 ft long, for a 14,300 square ft footprint area. The Headhouse building has a footprint of about 4,000 square ft. In 1997, a new concrete paved timber pier with promenade and timber support structure was constructed around the Piershed. The promenade has a width of 22 ft on the north side and 38ft on the south side.

The original structure is composed of 8 masonry sub-pier foundations, constructed of concrete and granite, which support a composite pier deck. The composite pier deck was constructed using riveted steel girders encased in concrete jack arches. The promenade is composed of a cast-in-place concrete deck supported by timber stringers. Repairs to the sub-pier foundations have been completed under a previous contract.

The Hugh L. Carey Battery Park City Authority (the Authority) in coordination with the New York City Economic Development Corporation (EDC) intends to develop Pier A with the intent of leasing the facility to other tenants. The Authority has been designated as the developer of the structure by EDC. The first phase of this work (the non-structural interior demolition), and the second phase of this work (the pier deck replacement) will have been completed prior to the start of Phase III (core and shell).

Scope of Work

The core and shell construction is Phase III of the Pier A Renovation Project. The work has been designed by H3 Hardy Collaborative Architecture and Weidlinger Associates. The drawings and specifications will be available on H3 Hardy Collaborative's ftp site.

<ftp://216.75.85.87/pier-a-public/Controlled%20Inspections/>

Username: pierapublicftp

Password: cpieraftp4589

Appendix VI

Proposal & Award Schedule

Proposal & Award Schedule

The following dates are important for the successful submission of the Proposal. All questions regarding the Work are to be in computerized format and submitted to the Authority on disk or via email (callenv@bpcauthor.org) on or before the date of the pre-proposal conference. All questions will be answered at the pre-proposal conference and/or via addenda issued in accordance with the dates indicated below. Pre-award meetings will be held with selected Proposer(s) on the date as indicated below between the hours of 9:00 a.m. and 4:00 p.m. Each Proposer should plan to be available.

Pre-proposal Meeting:	August 18, 2010, Time TBD
All Questions Due	August 20, 2010 Close of Business
Addenda issued (if required)	August 25, 2010 Close of Business
Proposals Due:	September 8, 2010, 5PM No Later
Pre Award Interviews:	September 13, 2010 2:00 p.m.
Selection:	September 17, 2010

Appendix VII:

Submittals to Accompany Proposals

Submittals To Accompany Proposals

The Proposer shall submit three (3) complete original paper copies and a complete electronic copy of the Proposal including the material set forth below. The Cost Proposal form shall be a PDF file. All other documents shall be xls, doc or pdf.

1. Exhibit Part 3: MBE/WBE Required Participation Form from Appendix IV
 2. Exhibit Part 4: MBE/WBE Utilization Plan Form from Appendix IV
 3. Statement of Non-Collusion from Appendix IV
 4. Technical Salary Rates from Appendix VIII (be sure to include the titles of everyone designated to be working on the project, including subconsultants. Once the project is awarded additional titles and rates will not be accepted.)
 5. Addenda and Signed acknowledgment of Addenda if issued for the Project.
 6. List of other fees: in-house, vendors, reimbursables, etc.
 7. List of all subconsultants including non- MBE/WBE
 8. A completed BPCA Statement of Qualifications, New York State Finance Law 139 Mandatory Forms Packet and Vendor Responsibility Questionnaire.
 9. Resumes for all project personnel showing experience by the individual on similar projects.
 10. Current (within 6 months) Audited Financial Statement and W9 form.
 11. Approach to work.
-

Appendix VIII:

The Proposal

COST PROPOSAL

(Proposer to submit executed Cost Proposal on its letterhead)

Date:

Battery Park City Authority
One World Financial Center - 24th Floor
New York, New York 10281

Attention: Ms. Venus Callender
Contract Administrator

Dear Ms. Callender:

The undersigned (the "Proposer") hereby proposes to provide all specified work necessary to perform the work for (type in name of Project as it appears on the RFP cover sheet). The Proposer agrees to commence the Work immediately upon receipt of the Initial Letter of Intent in accordance with the terms stipulated in the following pages, for the sum written below.

A. Base Proposal

- i) A Not-to-Exceed amount of \$ -() (_____ Dollars and _____ Cents) to perform all work associated with this RFP plus

B. Salary Rates

1. The Proposer has submitted with its proposal, technical salary rates for all employees slated to work on this project, according to the attached technical salary sheet in Appendix V.
2. The Proposer has submitted with its proposal, labor rates for all trades, including all costs except overhead and profit. Prices shown include base hourly rate, overtime rate, insurance and benefits.

Name of Proposer:

Title:

BID FORM

CONTRACT: CONTROLLED INSPECTION

BID PRICING INSTRUCTIONS: Provide bid amounts as indicated, in the spaces provided below. The undersigned bidder ("Bidder") proposes to furnish all transportation within 5 boros, labor, materials, tools, supplies, equipment, services, insurance, administration, pickup and delivery, overhead and profit and to pay all applicable taxes and to perform all Work as provided in the Contract Documents for the complete performance of the above referenced Contract ("Contract").

Catagory	Inspection	Units	Unit Cost	Quantity of Units	Total
General Construction	Flood Zone Compliance	4 Hrs	\$	1	\$
	Firestop, Draftstop, and Fireblock Systems	4 Hrs	\$	4	\$
	Fire Resistance Rated Construction	4 Hrs	\$	4	\$
Mechanical	Mechanical Systems	4 Hrs	\$	4	\$
	Final Inspection	4 Hrs	\$	4	\$
		4 Hrs			
Sprinkler/Standpipe	Sprinkler Systems	4 Hrs	\$	4	\$
	Standpipe Systems	4 Hrs	\$	4	\$
Structural	Steel Welding	4 Hrs	\$	5	\$
	Erection and Bolting	4 Hrs	\$	5	\$
	Concrete Cast – In – Place Field Inspection	4 Hrs	\$	10	\$
	Concrete Cylinders Test	Each	\$	100	\$
	Concrete Design Mix	Each	\$	3	\$

Controlled Inspections for Pier A
Core and Shell Phase III

The Proposal

	Concrete Plant Inspection	Each	\$	6	\$
	Structural Safety	4 Hrs	\$	4	\$
	Soil Fill Placement and In Place Density Test	4 Hrs	\$	4	\$
<u>General</u>	Take responsibility for all TR-1 and process initial and final forms	Each	\$	15	\$
Total Bid Price (Based on Quantities Listed)					\$
Hourly Rate	Hourly rate for general field inspections when exceeding a 4 hour field inspection	Each	\$	1	\$
<u>Add Alternate #1</u>	Water Testing for windows as per specifications (Preparation of window for tests by others)	LS	\$	LS	\$

- Services rendered beyond the quantities listed above will be paid for based on Unit Cost X Hrs.
- This is not a lump sum bid price. Those services based on quantities listed above not rendered will not be invoiced to the Battery Park City Authority.

Technical Salary Rates

Proposers shall provide all appropriate persons necessary to ensure the highest quality work. Proposers shall furnish the names and resumes of all Project personnel. The rates listed below represent contract unit rates for the personnel as listed within the assigned categories. Invoicing will be based on actual hours worked multiplied by the unit rate. The unit rate is the actual salary times an auditable multiplier indicated below. The auditable multiplier shall be limited to the direct payroll burden itemized below, overhead (allowances as defined in list below) and a reasonable profit percentage as indicated below.

Itemization of Direct Payroll Burden

1. F.I.C.A
2. Federal Unemployment Insurance
3. State Unemployment Insurance
4. Worker's Compensation
5. Life Insurance
6. Accidental death and Disbursement
7. NYS Disability Insurance
8. PL and PD Insurance
9. Group Hospitalization
10. Vacation time attributable to the Project
11. Major Medical Insurance
12. Pension and Profit Sharing Plan
13. 401K Program (company contribution)
14. Medicare
15. Long Term Disability Insurance
16. Company Automobile Expenses
17. Tuition and Seminar Reimbursement
18. Company Training Program
19. Employee Bonuses- non-principals and non- shareholders
20. Travel and Meal Allowances – overtime work only
21. Premium for Staff Overtime- support or clerical work
22. Sick Time and Personal Days for employees
23. Comprehensive General Liability
24. Holidays

Proposer:

Name of Company

Printed Name of Executing Officer

Title

Signature

Controlled Inspections for Pier A
Core and Shell Phase III

The Proposal

Date: _____

Appendix IX:

Access to FTP site for document review

<ftp://216.75.85.87/pier-a-public/Controlled%20Inspections/>

Username: pierapublicftp

Password: cpieraftp4589

Appendix X:

Statement of Qualifications Form
NYS Finance Law 139 Mandatory Forms, W9
& Vendor Responsibility Questionnaire

NYS FINANCE LAW §139 MANDATORY FORMS PACKET INSTRUCTIONS

In your packet, you have 5 forms:

1. Language for Inclusion in Solicitation

*This document must be included in all RFP's, Bid documents or Mandatory Forms packet if there is no RFP. (1 page)

2. Language to Obtain Offerer's Affirmation of Understanding of and Agreement pursuant to State Finance Law §139-j (3) and §139-j (6) (b)

*This form must be included in the Mandatory Forms Packet. (1 page)

3. Language to Obtain an Offerer's Certification of Compliance with State Finance Law §139-k(5)

*This form must be included in the Mandatory Forms Packet. (1 page)

4. Language to Obtain the Offerer's Disclosure of Prior Non-Responsibility Determinations

*This form must be included in the Mandatory Forms Packet. (3 pages)

5. Contract Termination Provision

*This document must be included in the Mandatory Forms Packet.

This document must be included in RFP's, bid documents, or Mandatory Forms Packet, if there is no RFP.

Language for Inclusion in Solicitation

Background:

State Finance Law §139-j (6) requires that a Governmental Entity incorporate a summary of its policy and prohibitions regarding permissible contacts during a covered procurement.

BPCA PERMISSIVE CONTACTS POLICY:

Pursuant to State Finance Law, §139-j and 139-k, this solicitation, RFP, or Invitation for Bids includes and imposes certain restrictions on communications between Battery Park City Authority and its subsidiaries and affiliates and an Offerer (Contractor/Consultant or their representative) during the procurement process. An Offerer/bidder (or its representative) is restricted from making contacts from the earliest notice of intent to solicit offers [i.e. from Contract Reporter ad publication] through final award and approval of the Procurement Contract by BPCA ("Restricted Period") to other than **designated staff** unless it is a contact that is included among certain statutory exceptions set forth in State Finance Law § 139-j (3) (a). The designated staff contact person is identified in this solicitation. BPCA employees are also required to obtain and record certain information when contacted during the restricted period, and make a determination of the responsibility of the Offerer/bidder pursuant to these two statutes. Certain findings of non-responsibility can result in rejection for contract award, and in the event of two findings within a 4 year period, the Offerer/bidder will be debarred from obtaining governmental Procurement Contracts.

This form must be included in Mandatory Forms Packet

Language to Obtain Offerer's Affirmation of Understanding of and Agreement pursuant to State Finance Law §139-j (3) and §139-j (6) (b)

Background:

State Finance Law §139-j (6) (b) provides that:

Every Governmental Entity shall seek written affirmations from all Offerers as to the Offerer's understanding of and agreement to comply with the Governmental Entity's procedures relating to permissible contacts during a Governmental Procurement pursuant subdivision three of this section.

Offerer affirms that it understands and agrees to comply with the procedures of the Government Entity relative to permissible contacts as required by State Finance Law §139-j (6)(b).

Offerer's Name: _____
(Company)

Date: _____

By: _____
(Signature)

Name: _____
(Printed)

Title: _____

Address: _____

This form must be included in the Mandatory Forms Packet

**Language to Obtain an Offerer's Certification of Compliance
with State Finance Law §139-k(5)**

Background:

New York State Finance Law §139-k(5) requires that every Procurement Contract awarded is subject to the provisions of State Finance Law §139-k or 139-j shall contain a certification by the Offerer that all information provided to the procuring Governmental Entity with respect to State Finance Law §139-k is complete, true and accurate.

Include the following language for certification by the Offerer:

Contractor/Consultant Certification:	
<i>I certify that all information provided to Battery Park City Authority, its subsidiaries and affiliates with respect to State Finance Law §139-k is complete, true and accurate.</i>	
Offerer's Name: _____ (Company)	Date: _____
By: _____ (Signature)	
Name: _____ (Printed)	
Title: _____	
Address: _____ _____	

This form must be included in the Mandatory Forms Packet

Language to Obtain the Offerer's Disclosure of Prior Non-Responsibility Determinations

Background:

New York State Finance Law §139-k (2) obligates Battery Park City Authority to obtain specific information regarding prior non-responsibility determinations with respect to State Finance Law §139-j. This information must be collected in addition to the information that is separately obtained pursuant to State Finance Law §163(9). In accordance with State Finance Law §139-k, an Offerer must be asked to disclose whether there has been a finding of non-responsibility made within the previous four (4) years by any Governmental Entity due to: (a) a violation of State Finance Law §139-j or (b) the intentional provision of false or incomplete information to a Governmental Entity. The terms "Offerer" and "Governmental Entity" are defined in State Finance Law § 139-k (l). State Finance Law §139-j sets forth detailed requirements about the restrictions on Contacts during the procurement process. A violation of State Finance Law §139-j includes, but is not limited to, an impermissible Contact during the Restricted Period (for example, contacting a person or entity other than the Designated Contact Person, when such contact does not fall within one of the exemptions).

As part of its responsibility determination, State Finance Law §139-k (3) mandates consideration of whether an Offerer fails to timely disclose accurate or complete information regarding the above non-responsibility determination. In accordance with law, no Procurement Contract shall be awarded to any Offerer that fails to timely disclose accurate or complete information under this section, unless a finding is made that the award of the Procurement Contract to the Offerer is necessary to protect public property or public health, or public safety, and that the Offerer is the only source capable of supplying the required Article of Procurement within the necessary timeframe. See State Finance Law §139-j (10) (b) and 139-k (3).

Offerer's Disclosure of Prior Non-Responsibility Determinations

Name of Individual or Entity/Offerer Seeking to Enter into the Procurement Contract.

Address: _____

Name and Title of Person Submitting this Form: _____

Project Name: _____

Date: _____

1. Has any Governmental Entity made a finding of non-responsibility regarding the individual (you) or entity (your company/firm) seeking to enter into the Procurement Contract in the previous four (4) years?

(Please circle): No Yes

If yes, please answer the next questions:

2. Was the basis for the finding of non-responsibility due to a violation of State Finance Law §139-j?

(Please circle): No Yes

3. Was the basis for the finding of non-responsibility due to the intentional provision of false or incomplete information to a Governmental Entity?

(Please circle): No Yes

4. If you answered yes to any of the above questions, please provide details regarding the finding of non-responsibility below.

Governmental Entity: _____

Date of Finding of Non-Responsibility: _____

Basis of Finding of Non-Responsibility: _____

(Add additional pages as necessary)

5. Has any Governmental Entity or other governmental agency terminated or withheld a Procurement Contract with the above-named individual or entity due to the intentional provision of false or incomplete information? (Please circle): No Yes

6. If yes, please provide details below.

Governmental Entity: _____

Date of Termination or Withholding of Contract: _____

Basis of Termination or Withholding: _____

(Add additional pages as necessary)

Offerer certifies that all information provided to the Governmental Entity with respect to State Finance Law §139-k is complete, true and accurate.

By:

(Signature)

Name: _____
(Print Name)

Date: _____

Title: _____

This document must be included in the Mandatory Forms Packet

Contract Termination Provision

Background:

A Contract Termination Provision shall be included in each Procurement Contract governed by State Finance Law §139-k. New York State Finance Law §139-k(5) provides that every procurement contract award subject to the provisions of State Finance Law §139-k and 139-j shall contain a provision authorizing Battery Park City Authority, and its subsidiaries and affiliates, to terminate the contract in the event that the certification under §139-k is found to be intentionally false or intentionally incomplete. This statutory contract language authorizes termination. "Governmental Entity" and "procurement contract" are defined in State Finance Law §139-k (1) and includes BPCA, its subsidiaries and affiliates.

Contract Termination Provision

The Battery Park City Authority reserves the right to terminate this contract in the event it is found that the certification filed by Contractor/Consultant pursuant to New York State Finance Law §139-k was intentionally false or intentionally incomplete. Upon such finding, Battery Park City Authority may exercise its termination right by providing written notification to the Contractor/Consultant in accordance with the written notification terms of this contract. If a contract is terminated in accordance with State Finance Law §139-k (5), Battery Park City Authority, its subsidiaries and affiliates, will include a statement in Battery Park City Authority's procurement record describing the basis for any action taken under the termination provision.

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)

Business name, if different from above

Check appropriate box: ☐ Individual/Sole proprietor ☐ Corporation ☐ Partnership
☐ Limited liability company. Enter the tax classification (D=disregarded entity, C=corporation, P=partnership) ▶
☐ Other (see instructions) ▶

☐ Exempt
payee

Address (number, street, and apt. or suite no.)

Requester's name and address (optional)

City, state, and ZIP code

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 Line 1 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.

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

Social security number

or

Employer identification number

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 ▶

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.

The person who gives Form W-9 to the partnership for purposes of establishing its U.S. status and avoiding withholding on its allocable share of net income from the partnership conducting a trade or business in the United States is in the following cases:

- The U.S. owner of a disregarded entity and not the entity,

- The U.S. grantor or other owner of a grantor trust and not the trust, and
- The U.S. trust (other than a grantor trust) and not the beneficiaries of the trust.

Foreign person. If you are a foreign person, do not use Form W-9. Instead, use the appropriate Form W-8 (see Publication 515, Withholding of Tax on Nonresident Aliens and Foreign Entities).

Nonresident alien who becomes a resident alien. Generally, only a nonresident alien individual may use the terms of a tax treaty to reduce or eliminate U.S. tax on certain types of income. However, most tax treaties contain a provision known as a "saving clause." Exceptions specified in the saving clause may permit an exemption from tax to continue for certain types of income even after the payee has otherwise become a U.S. resident alien for tax purposes.

If you are a U.S. resident alien who is relying on an exception contained in the saving clause of a tax treaty to claim an exemption from U.S. tax on certain types of income, you must attach a statement to Form W-9 that specifies the following five items:

1. The treaty country. Generally, this must be the same treaty under which you claimed exemption from tax as a nonresident alien.
2. The treaty article addressing the income.
3. The article number (or location) in the tax treaty that contains the saving clause and its exceptions.
4. The type and amount of income that qualifies for the exemption from tax.
5. Sufficient facts to justify the exemption from tax under the terms of the treaty article.

Example. Article 20 of the U.S.-China income tax treaty allows an exemption from tax for scholarship income received by a Chinese student temporarily present in the United States. Under U.S. law, this student will become a resident alien for tax purposes if his or her stay in the United States exceeds 5 calendar years. However, paragraph 2 of the first Protocol to the U.S.-China treaty (dated April 30, 1984) allows the provisions of Article 20 to continue to apply even after the Chinese student becomes a resident alien of the United States. A Chinese student who qualifies for this exception (under paragraph 2 of the first protocol) and is relying on this exception to claim an exemption from tax on his or her scholarship or fellowship income would attach to Form W-9 a statement that includes the information described above to support that exemption.

If you are a nonresident alien or a foreign entity not subject to backup withholding, give the requester the appropriate completed Form W-8.

What is backup withholding? Persons making certain payments to you must under certain conditions withhold and pay to the IRS 28% of such payments. This is called "backup withholding." Payments that may be subject to backup withholding include interest, tax-exempt interest, dividends, broker and barter exchange transactions, rents, royalties, nonemployee pay, and certain payments from fishing boat operators. Real estate transactions are not subject to backup withholding.

You will not be subject to backup withholding on payments you receive if you give the requester your correct TIN, make the proper certifications, and report all your taxable interest and dividends on your tax return.

Payments you receive will be subject to backup withholding if:

1. You do not furnish your TIN to the requester,
2. You do not certify your TIN when required (see the Part II instructions on page 3 for details),
3. The IRS tells the requester that you furnished an incorrect TIN,

4. The IRS tells you that you are subject to backup withholding because you did not report all your interest and dividends on your tax return (for reportable interest and dividends only), or

5. You do not certify to the requester that you are not subject to backup withholding under 4 above (for reportable interest and dividend accounts opened after 1983 only).

Certain payees and payments are exempt from backup withholding. See the instructions below and the separate instructions for the Requester of Form W-9.

Also see *Special rules for partnerships* on page 1.

Penalties

Failure to furnish TIN. If you fail to furnish your correct TIN to a requester, you are subject to a penalty of \$50 for each such failure unless your failure is due to reasonable cause and not to willful neglect.

Civil penalty for false information with respect to withholding. If you make a false statement with no reasonable basis that results in no backup withholding, you are subject to a \$500 penalty.

Criminal penalty for falsifying information. Willfully falsifying certifications or affirmations may subject you to criminal penalties including fines and/or imprisonment.

Misuse of TINs. If the requester discloses or uses TINs in violation of federal law, the requester may be subject to civil and criminal penalties.

Specific Instructions

Name

If you are an individual, you must generally enter the name shown on your income tax return. However, if you have changed your last name, for instance, due to marriage without informing the Social Security Administration of the name change, enter your first name, the last name shown on your social security card, and your new last name.

If the account is in joint names, list first, and then circle, the name of the person or entity whose number you entered in Part I of the form.

Sole proprietor. Enter your individual name as shown on your income tax return on the "Name" line. You may enter your business, trade, or "doing business as (DBA)" name on the "Business name" line.

Limited liability company (LLC). Check the "Limited liability company" box only and enter the appropriate code for the tax classification ("D" for disregarded entity, "C" for corporation, "P" for partnership) in the space provided.

For a single-member LLC (including a foreign LLC with a domestic owner) that is disregarded as an entity separate from its owner under Regulations section 301.7701-3, enter the owner's name on the "Name" line. Enter the LLC's name on the "Business name" line.

For an LLC classified as a partnership or a corporation, enter the LLC's name on the "Name" line and any business, trade, or DBA name on the "Business name" line.

Other entities. Enter your business name as shown on required federal tax documents on the "Name" line. This name should match the name shown on the charter or other legal document creating the entity. You may enter any business, trade, or DBA name on the "Business name" line.

Note. You are requested to check the appropriate box for your status (individual/sole proprietor, corporation, etc.).

Exempt Payee

If you are exempt from backup withholding, enter your name as described above and check the appropriate box for your status, then check the "Exempt payee" box in the line following the business name, sign and date the form.

Generally, individuals (including sole proprietors) are not exempt from backup withholding. Corporations are exempt from backup withholding for certain payments, such as interest and dividends.

Note. If you are exempt from backup withholding, you should still complete this form to avoid possible erroneous backup withholding.

The following payees are exempt from backup withholding:

1. An organization exempt from tax under section 501(a), any IRA, or a custodial account under section 403(b)(7) if the account satisfies the requirements of section 401(f)(2),

2. The United States or any of its agencies or instrumentalities,

3. A state, the District of Columbia, a possession of the United States, or any of their political subdivisions or instrumentalities,

4. A foreign government or any of its political subdivisions, agencies, or instrumentalities, or

5. An international organization or any of its agencies or instrumentalities.

Other payees that may be exempt from backup withholding include:

6. A corporation,

7. A foreign central bank of issue,

8. A dealer in securities or commodities required to register in the United States, the District of Columbia, or a possession of the United States,

9. A futures commission merchant registered with the Commodity Futures Trading Commission,

10. A real estate investment trust,

11. An entity registered at all times during the tax year under the Investment Company Act of 1940,

12. A common trust fund operated by a bank under section 584(a),

13. A financial institution,

14. A middleman known in the investment community as a nominee or custodian, or

15. A trust exempt from tax under section 664 or described in section 4947.

The chart below shows types of payments that may be exempt from backup withholding. The chart applies to the exempt payees listed above, 1 through 15.

IF the payment is for . . .	THEN the payment is exempt for . . .
Interest and dividend payments	All exempt payees except for 9
Broker transactions	Exempt payees 1 through 13. Also, a person registered under the Investment Advisers Act of 1940 who regularly acts as a broker
Barter exchange transactions and patronage dividends	Exempt payees 1 through 5
Payments over \$600 required to be reported and direct sales over \$5,000 ¹	Generally, exempt payees 1 through 7

¹ See Form 1099-MISC, Miscellaneous Income, and its Instructions.

² However, the following payments made to a corporation (including gross proceeds paid to an attorney under section 6045(f), even if the attorney is a corporation) and reportable on Form 1099-MISC are not exempt from backup withholding: medical and health care payments, attorneys' fees, and payments for services paid by a federal executive agency.

Part I. Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. If you are a resident alien and you do not have and are not eligible to get an SSN, your TIN is your IRS Individual taxpayer identification number (ITIN). Enter it in the social security number box. If you do not have an ITIN, see *How to get a TIN* below.

If you are a sole proprietor and you have an EIN, you may enter either your SSN or EIN. However, the IRS prefers that you use your SSN.

If you are a single-member LLC that is disregarded as an entity separate from its owner (see *Limited liability company (LLC)* on page 2), enter the owner's SSN (or EIN, if the owner has one). Do not enter the disregarded entity's EIN. If the LLC is classified as a corporation or partnership, enter the entity's EIN.

Note. See the chart on page 4 for further clarification of name and TIN combinations.

How to get a TIN. If you do not have a TIN, apply for one immediately. To apply for an SSN, get Form SS-5, Application for a Social Security Card, from your local Social Security Administration office or get this form online at www.ssa.gov. You may also get this form by calling 1-800-772-1213. Use Form W-7, Application for IRS Individual Taxpayer Identification Number, to apply for an ITIN, or Form SS-4, Application for Employer Identification Number, to apply for an EIN. You can apply for an EIN online by accessing the IRS website at www.irs.gov/businesses and clicking on Employer Identification Number (EIN) under Starting a Business. You can get Forms W-7 and SS-4 from the IRS by visiting www.irs.gov or by calling 1-800-TAX-FORM (1-800-829-3676).

If you are asked to complete Form W-9 but do not have a TIN, write "Applied For" in the space for the TIN, sign and date the form, and give it to the requester. For interest and dividend payments, and certain payments made with respect to readily tradable instruments, generally you will have 60 days to get a TIN and give it to the requester before you are subject to backup withholding on payments. The 60-day rule does not apply to other types of payments. You will be subject to backup withholding on all such payments until you provide your TIN to the requester.

Note. Entering "Applied For" means that you have already applied for a TIN or that you intend to apply for one soon.

Caution: A disregarded domestic entity that has a foreign owner must use the appropriate Form W-8.

Part II. Certification

To establish to the withholding agent that you are a U.S. person, or resident alien, sign Form W-9. You may be requested to sign by the withholding agent even if items 1, 4, and 5 below indicate otherwise.

For a joint account, only the person whose TIN is shown in Part I should sign (when required). Exempt payees, see *Exempt Payee* on page 2.

Signature requirements. Complete the certification as indicated in 1 through 5 below.

1. Interest, dividend, and barter exchange accounts opened before 1984 and broker accounts considered active during 1983. You must give your correct TIN, but you do not have to sign the certification.

2. Interest, dividend, broker, and barter exchange accounts opened after 1983 and broker accounts considered inactive during 1983. You must sign the certification or backup withholding will apply. If you are subject to backup withholding and you are merely providing your correct TIN to the requester, you must cross out item 2 in the certification before signing the form.

3. Real estate transactions. You must sign the certification. You may cross out item 2 of the certification.

4. Other payments. You must give your correct TIN, but you do not have to sign the certification unless you have been notified that you have previously given an incorrect TIN. "Other payments" include payments made in the course of the requester's trade or business for rents, royalties, goods (other than bills for merchandise), medical and health care services (including payments to corporations), payments to a nonemployee for services, payments to certain fishing boat crew members and fishermen, and gross proceeds paid to attorneys (including payments to corporations).

5. Mortgage interest paid by you, acquisition or abandonment of secured property, cancellation of debt, qualified tuition program payments (under section 529), IRA, Coverdell ESA, Archer MSA or HSA contributions or distributions, and pension distributions. You must give your correct TIN, but you do not have to sign the certification.

What Name and Number To Give the Requester

For this type of account:	Give name and SSN of:
1. Individual	The individual
2. Two or more individuals (joint account)	The actual owner of the account or, if combined funds, the first individual on the account ¹
3. Custodian account of a minor (Uniform Gift to Minors Act)	The minor ²
4. a. The usual revocable savings trust (grantor is also trustee)	The grantor-trustee ³
b. So-called trust account that is not a legal or valid trust under state law	The actual owner ¹
5. Sole proprietorship or disregarded entity owned by an individual	The owner ³
For this type of account:	Give name and EIN of:
6. Disregarded entity not owned by an individual	The owner
7. A valid trust, estate, or pension trust	Legal entity ⁴
8. Corporate or LLC electing corporate status on Form 8832	The corporation
9. Association, club, religious, charitable, educational, or other tax-exempt organization	The organization
10. Partnership or multi-member LLC	The partnership
11. A broker or registered nominee	The broker or nominee
12. Account with the Department of Agriculture in the name of a public entity (such as a state or local government, school district, or prison) that receives agricultural program payments	The public entity

¹ List first and circle the name of the person whose number you furnish. If only one person on a joint account has an SSN, that person's number must be furnished.

² Circle the minor's name and furnish the minor's SSN.

³ You must show your individual name and you may also enter your business or "DBA" name on the second name line. You may use either your SSN or EIN (if you have one), but the IRS encourages you to use your SSN.

⁴ List first and circle the name of the trust, estate, or pension trust. (Do not furnish the TIN of the personal representative or trustee unless the legal entity itself is not designated in the account title.) Also see *Special rules for partnerships* on page 1.

Note. If no name is circled when more than one name is listed, the number will be considered to be that of the first name listed.

Privacy Act Notice

Section 6109 of the Internal Revenue Code requires you to provide your correct TIN to persons who must file information returns with the IRS to report interest, dividends, and certain other income paid to you, mortgage interest you paid, the acquisition or abandonment of secured property, cancellation of debt, or contributions you made to an IRA, or Archer MSA or HSA. The IRS uses the numbers for identification purposes and to help verify the accuracy of your tax return. The IRS may also provide this information to the Department of Justice for civil and criminal litigation, and to cities, states, the District of Columbia, and U.S. possessions to carry out their tax laws. We may also disclose this information to other countries under a tax treaty, to federal and state agencies to enforce federal nontax criminal laws, or to federal law enforcement and intelligence agencies to combat terrorism.

You must provide your TIN whether or not you are required to file a tax return. Payers must generally withhold 28% of taxable interest, dividend, and certain other payments to a payee who does not give a TIN to a payer. Certain penalties may also apply.

Secure Your Tax Records from Identity Theft

Identity theft occurs when someone uses your personal information such as your name, social security number (SSN), or other identifying information, without your permission, to commit fraud or other crimes. An identity thief may use your SSN to get a job or may file a tax return using your SSN to receive a refund.

To reduce your risk:

- Protect your SSN,
- Ensure your employer is protecting your SSN, and
- Be careful when choosing a tax preparer.

Call the IRS at 1-800-829-1040 if you think your identity has been used inappropriately for tax purposes.

Victims of identity theft who are experiencing economic harm or a system problem, or are seeking help in resolving tax problems that have not been resolved through normal channels, may be eligible for Taxpayer Advocate Service (TAS) assistance. You can reach TAS by calling the TAS toll-free case intake line at 1-877-777-4778 or TTY/TDD 1-800-829-4059.

Protect yourself from suspicious emails or phishing schemes. Phishing is the creation and use of email and websites designed to mimic legitimate business emails and websites. The most common act is sending an email to a user falsely claiming to be an established legitimate enterprise in an attempt to scam the user into surrendering private information that will be used for identity theft.

The IRS does not initiate contacts with taxpayers via emails. Also, the IRS does not request personal detailed information through email or ask taxpayers for the PIN numbers, passwords, or similar secret access information for their credit card, bank, or other financial accounts.

If you receive an unsolicited email claiming to be from the IRS, forward this message to phishing@irs.gov. You may also report misuse of the IRS name, logo, or other IRS personal property to the Treasury Inspector General for Tax Administration at 1-800-366-4484. You can forward suspicious emails to the Federal Trade Commission at: spam@uce.gov or contact them at www.consumer.gov/idtheft or 1-877-IDTHEFT(438-4338).

Visit the IRS website at www.irs.gov to learn more about identity theft and how to reduce your risk.

Statement of Qualifications

All questions must be answered and the data given must be clear and comprehensive. If necessary, questions may be answered on separate attached sheets. The Proposer may submit any additional information he desires.

Part A

1. Name of Proposer: _____
2. Permanent Main Office Address: _____
3. When Organized: _____
4. If a corporation, where incorporated: _____
5. a. NAME AND ADDRESS OF PARTNERS
(If Proposer is a FIRM, state here the name and residence of each partner thereof)

b. If Proposer is a CORPORATION, fill in the following blanks:
Name and Address of President _____

Name and Address of Vice President: _____

Name and Address of Secretary: _____

6. Does any other Contractor, vendor or person have, hold or may derive any actual or beneficial percentage of interest in any other form of ownership of the Proposer in an amount of 5% or more? If yes, provide _____.
If yes, please provide: Name _____
Address: _____

7. Provide your Dunn & Bradstreet identification number and the latest Dunn & Bradstreet credit report or a similar credit report and audited copies of Contractor's most recent balance sheet, income statement, statement of changes in financial position, notes to the financial statements and other financial statements. State the name and address of your principal bank and a bank officer who can respond to inquiries.

8. Provide your Employer Identification Number.

9. State whether you can provide ten million dollars in liability insurance and if not, state how much could be provided.

Yes _____ No _____ Other Amount _____

10. State whether or not you can provide payment and performance bonds, the amounts (both single and aggregate), and the name of your bonding company.

Yes _____ Bonding company:

No _____

Amounts _____

(BONDING ASSISTANCE FOR MBEs AND WBEs IS AVAILABLE FROM THE NEW YORK JOB DEVELOPMENT AUTHORITY BONDING ASSISTANCE EXPERIMENTS (BAX) PROGRAM, 212-818-1700, AS WELL AS THE REGIONAL ALLIANCE FOR SMALL CONTRACTORS, 212-435-6506).

PART B

1. Proposers will list computer proficiency of supervisors and company management.

2. Provide a list on work on separate sheet which Contractor presently has under contract indicating the name of the owner, present completion status, anticipated completion date and the dollar value.

3. a. What contracts has Contractor had with the State of New York, the City of New York, the federal government or any public agencies or authorities in the past 5 years?

Nature of Work	Contracting Agency	Contract # (If Known)	Date of Contract	Contract Amount	Agency Supervisor

- b. What subcontracts has Contractor had with contractors doing business with the State of New York, the City of New York, the federal government or any public agencies or authorities in the past 5 years?

Nature of Work	Prime Supervision Cntr.	Contracting Agency	Contract # (If Known)	Date of Contract	Subcontract Amount

4. Itemize the work you intend to perform with your own forces and items which you propose to subcontract.

5. Provide current resumes for Contractor's key management personnel which are not included in the list requested above. HVAC and Electrical Contractors: Detail in-house engineering staff, size, number of employees and their qualifications.

6. In the past 5 years, have any principals of Contractor been a principal in a business entity not listed on the stock exchange or in the NASDAQ system that has filed a

petition in bankruptcy or reorganization or has had bankruptcy proceedings initiated against it?

Yes _____ No _____

If yes, give the name of the filing, the court, the County and the reason for filing:

7. In the past five years has (i) Contractor, (ii) any firm which owns 5% or more of Contractor, or 5% or more of which is owned by Contractor, or (iii) any person listed in Part A been the subject of any of the following actions by any government agency*:
- a. been suspended, debarred, disqualified, had its prequalification revoked or otherwise been declared ineligible to bid?
Yes _____ No _____
 - b. been barred from proposing or denied a contract as a result of refusal of any such person to testify before a grand jury or administrative board?
Yes _____ No _____
 - c. been barred from proposing or denied a contract as a result of failure to meet statutory affirmative action or MBE/WBE requirements?
Yes _____ No _____
 - d. been denied contract despite being the low Proposer for any other reason?
Yes _____ No _____
 - e. been defaulted on any contract?
Yes _____ No _____
 - f. had a contract terminated?
Yes _____ No _____
 - g. failed to complete a Contract awarded to you?
Yes _____ No _____
 - h. been given a final unsatisfactory performance determination or deemed a poor performer (by letter or formal proceedings)?
Yes _____ No _____
 - i. been prevented or barred from proposing for any other reason?

Yes _____ No _____

- j. been denied a contract for failure to obtain surety or otherwise provide required security?

Yes _____ No _____

- k. had liquidated damages assessed against it upon completion of a contract?

Yes _____ No _____

* GOVERNMENT AGENCIES include city, state, federal public agencies, quasi-public agencies, authorities and corporations, public development corporations and local development corporations.

If the answer to any portion of question #10 is yes, please provide all relevant details, including the name of a contact person at the governmental agency.

8. a. Has any principal of Contractor been convicted of a felony or misdemeanor within the past 10 years?

Yes _____ No _____

If yes, state details:

Date of Conviction _____

Court of Conviction _____ State _____

Disposition (plea/conviction and sentence) _____

Index or Docket # _____

- b. Are any criminal charges presently pending against any principal of Contractor ?

Yes _____ No _____

If yes, state details:

Date of Charges _____ Court _____ State _____

Index or Docket # _____

Pending Charges _____

- c. Are any civil charges presently pending against any principal of Contractor ?

Yes _____ No _____

If yes, state details:

Date of Charges _____ Court _____ State _____

Index or Docket # _____

Pending Charges

9. To your knowledge, has Contractor, or any principal of Contractor, or any business entity in which any principal of Contractor has been a principal, been the subject of an investigation (civil or criminal) by any governmental agency or public authority within the past 10 years?

Are any criminal charges presently pending against any principal of Contractor ?

Yes _____ No _____

If yes, state name of agency, and details of investigation:

10. Is Contractor a business entity in which any principal of Contractor is a principal presently involved in any litigation (civil or criminal) with or against the State of new York, the City of New York, the federal government or any of their agencies or authorities?

Yes _____ No _____

If yes, provide the following::

Caption of Case

Court

Index Number

11. Within the previous 10 years, have you or any person listed in Part A the subject of any of the following:

- any criminal investigation, felony indictment or conviction concerning collusion or fraud in obtaining a contract for public work?

Yes _____ No _____

- any criminal investigation, felony indictment or conviction concerning formation of or any business association with an allegedly false or fraudulent women's, minority, or disadvantaged business enterprise (WBE, MBE, DBE)?

Yes _____ No _____

- suspension or revocation of any professional engineering or other professional license?
Yes _____ No _____
- any determination of a willful Labor violation (either federal or State)
Yes _____ No _____
- any decertification, denial, or forfeiture of Women's Business Enterprise, Minority Business Enterprise, or Disadvantaged Business Enterprise Status?
Yes _____ No _____

If you answered "yes" to any of the above questions, on a separate page, describe fully the details of the investigations, date and disposition of the action (answers should also cover any related or subsidiary firms).

12. To your knowledge, is Contractor, or any principal or employee of Contractor, or any other person listed in your answers in Part A, a former employee of Battery Park City Authority?

Yes _____ No _____

If yes, state the name of the principal, employee or shareholder of Contractor and give the title of the position held while at the Authority and the date of termination from services at the Authority.

Part C

1. Has any officer or partner of your organization ever been an officer or partner of an other organization that failed to complete a Contract? _____

If yes, state name of individual, other organization and reason:

2. Has any officer or partner of your organization ever failed to complete a Contract handled in his own name?

If yes, state name and reason therefore:

3. In what other lines of business do officers or partners of your organization have financial interest?

4. Provide the name of the individual who will provide personal supervision of this project.?

Name	Title	Office Phone number
------	-------	---------------------

5. Do you have, or can you obtain, sufficient men and equipment to instate this Contract as required by the "Bid Proposal"? _____

6. Provide names and phone numbers of references in Construction Equipment and Suppliers:

7. In emergencies, either day or night, what telephones should be called for immediate action?

Day	Night
-----	-------

8. List, on a separate sheet, all major equipment that you own (O) or plan to lease (L) to perform all work on this project.
9. Successful Proposer shall provide the OWNER at the signing of the Agreement, the following information:
 - a. Table of Organization of the CONTRACTOR showing the names and addresses of all individuals serving on the Board of Directors or comparable body of the CONTRACTOR.

Part D

In connection with the submission of this Bid for _____

(Name of Proposer)

I, _____ the * (applicant herein), (an officer or agent of the corporate applicant) namely its _____ *(swears) or (affirms) under the penalties of perjury that:

1. The following persons have a direct or indirect interest in this bid:

NAME	ADDRESS	DATE OF BIRTH MO/D/YR.
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

(In case of corporations, all officers of the corporation and stockholders owning more than 5% of the corporate stock must be listed. Attach an additional sheet, if necessary).

2. The following person(s) listed in (1.) above are related by blood or marriage to an officer or employee of the OWNER.

NAME	RELATIONSHIP	NAME/POSITION OF EMPLOYEE/OFFICER
------	--------------	-----------------------------------
